IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.08.2015

CORAM:

THE HONOURABLE Mr.JUSTICE R.MAHADEVAN

W.P.No.23715 of 2014

M/s.Kwang Jin India Auto Systems Pvt. Ltd.
(Formerly M/s.Technokwang Jin Auto Systems Ltd),
Plot No.G8, G9 & G10,
SIPCOT Industrial Part,
Sriperumbudur,
Kanchipuram,
Tamil Nadu-602 106. ...Petitioner

Vs

1. Commissioner of Customs (Appeal),
Customs House,
No.60 (33), Rajaji Salai,
Chennai-1.

2. Deputy Commissioner of Customs,
Special Valuation Branch,
O/o.The Commissioner of Customs (Sea-Port),
Custom House, No.60(33),
Rajaji Salai,
Chennai-1. ...Respondents

Writ petition filed under 226 of the Constitution of India for the issuance of writ of certiorarified mandamus to quash the Order-In-Appeal C.Cus No.162/2014 dated 3.2.2014 passed by the first respondent and direct the first respondent to decide the case on merits based on the decisions of Apex Court and CESTAT Chennai (supra).

For Petitioner : Mr.P.Ayyam Perumal

For Respondents : Mr.M.Santhana Raman, Senior Standing Counsel

ORDER

Challenging the order dated 03.02.2014, passed by the first respondent, the petitioner has filed the present writ petition.

2.The petitioner is a company incorporated under the Companies Act and carrying on business of manufacturing, assembling, marketing and selling of car accessories from the components imported from M/s.Kwang Jin Engineering Limited, Korea and M/s.Kwang Jin Vietnam Co., Vietnam. According to the petitioner, it is a fully owned subsidiary of the foreign company and therefore, it is related to the foreign supplier in terms of Rule 2(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. By order dated 05.10.2009, it was held that both the importers and suppliers are related and the invoice price did not influence the relationship. the said order remained in force for three years from 05.10.2009 to April, 2012. When the petitioner approached for renewal of the order, by order dated 29.08.2013, the adjudicating authority rejected the declared value of the imported goods under Rule 12(1) and directed to add huge amounts paid towards use of LOGOs, royalty etc., to the invoice value at the time of assessment of bills of entry otherwise the importer shall make payment of duty on one time basis at the applicable rate of duty. Aggrieved against the same, the petitioner preferred an appeal before the first respondent. By the impugned order dated 03.02.2014, the first respondent dismissed the same as time barred. Hence the present writ petition.

3.The second respondent has filed counter affidavit, supporting the impugned order passed by the first respondent. It is stated in the counter that the petitioner is having alternative remedy under Section 129A(1) (b) of the Customs Act and without exhausting the same, the petitioner has filed the present writ petition and prays for dismissal of the writ petition.

4.Heard the learned counsel for the petitioner and the learned senior standing counsel appearing for the respondents.

5.By perusal of the impugned order, it is seen that only on the ground of delay, the impugned order came to be passed and the appellate authority has stated that as per Section 128(1) of the Customs Act, 1962, appeal has to be filed within 60 days from the date of communication of the order and it could be further condoned by a period of 30 days. The subject matter in issue is inclusion of expenditure of royalty amount, technical know how fee and licence fee on account of the goods manufactured in India to the value of goods imported. It is the specific case of the petitioner that no extra duty is liable to be paid on account of royalty payment, technical know how fee and licence fee and the petitioner did not have adequate opportunity to defend his case before the authority. According to the learned counsel for the petitioner, no show cause notice as well as personal hearing was given. Hence, this Court is of the view that on violation of principles of natural justice, the order is to be defended before the appellate authority only, on merits.

6.In view of the above, the petitioner is permitted to represent the appeal papers before the appellate authority within a period of two weeks from the date of receipt of a copy of this order. On such representation, the appellate authority shall entertain the same and pass appropriate orders on merits and in accordance with law, as expeditiously as possible.

7.The writ petition is disposed of with the above directions. No costs.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner of Customs (Appeal),
   Customs House,
   No.60 (33), Rajaji Salai,
   Chennai-1.

2. The Deputy Commissioner of Customs,
Special Valuation Branch,
O/o.The Commissioner of Customs (Sea-Port),
Custom House, No.60(33), Rajaji Salai,
Chennai-1.

1 CC to Mr.P.Ayyam Perumal, Advocate SR.No. 45682

1 CC to Mr.M.Santhana Raman, Advocate SR.No. 45190

W.P.No.23715 of 2014

GR (CO)
PSI (10.09.2015)