IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.08.2015

CORAM:

THE HON'BLE MR. JUSTICE R. MAHADEVAN

W.P.No.22749 of 2015 &
M.P.Nos.1 & 2 of 2015

Nakoda Unique Gold Private Limited,
Rep. B y its Managing Director,
Mr.K.Ramanlal
No.59, N.S.C. Bose Road,
Sowcarpet,
Chennai – 600 079 .. Petitioner

v.

1. The Commissioner of Customs (Imports)
Air Cargo Complex,
Meenambakkam,
Chennai - 600 027

2. The Assistant Commissioner of Customs (Imports),
Appraising Group No.III,
Air Cargo Complex,
Meenambakkam,
Chennai - 600 027

3. The Appraising Officer of Customs (Imports),
Appraising Group No.III,
Air Cargo Complex,
Meenambakkam,
Chennai - 600 027 .. Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of Certiorarified Mandamus to call for the records of the respondents in Bill of Entry No.INMAA4 9934208 dated 17.7.2015 and quash the same as illegal in so far as it relates to the demand of 100% Bank Guarantee towards the customs duty of 16% leviable in the normal course of import and consequently direct the respondents to allow the clearance of the goods by accepting the Special Additional Customs Duty of 1% as per the Malasiya-India Comprehensive Economic Co-operation Agreement.

For petitioner : Mr.N.Murali Kumaran
for M/s.Mcgan Law firm

For respondents: Mr.G.Rajagopal,
Addl. Solicitor General
Assisted by MR.A.P.Srinivas,
Standing Counsel - for R1 to R3

O R D E R

Heard Mr.N.Murali Kumaran, learned counsel for the petitioner and Mr.G.Rajagopal, learned Additional Solicitor General for the respondents.

2. This writ petition has been filed challenging the impugned proceedings of the respondents in Bill of Entry No.INMAA4 9934208, dated 17.7.2015 and to quash the same as illegal in so far as it relates to the demand of 100% Bank Guarantee towards the customs duty of 16% leviable in the normal course of import and consequently direct the respondents to allow the clearance of the goods by accepting the Special Additional Customs Duty of 1% as per the Malasiya-India Comprehensive Economic Co-operation Agreement.

3.1 The petitioner company is registered under the Companies Act, 1956, on the file of the Registrar of Companies, Chennai and converted into a Private Limited Company from a Proprietary concern in the year 2011. The petitioner company also possesses Import Export Code granted by the office of the Director General of Foreign Trade for importation and exportation of unbranded gold jewellery. The petitioner company also registered with the Tamil Nadu Commercial Taxes Department under TIN No.33140381370 and under CST No.921118 and duly filing VAT returns and paying the Tamil Nadu Value Added Tax at the appropriate rates on all their sales of unbranded gold jewellery in India. All the purchases of gold jewellery and sales and re-sales of gold jewellery are covered by proper documents of purchase and sale. They are also duly reported to Governmental authorities such as VAT and Income Tax Departments.

3.2 The case of the petitioner is that the Government of India and Malaysia have entered into an agreement viz., “Malaysia-India Comprehensive Economic Co-operation Agreement (hereinafter referred to as MICECA) under which certain specified goods can be imported from Malaysia to India by Indian Importers without having to pay the basic customs duty and countervailing duty other than 1% of Special Additional Customs Duty as per the said MICECA. The import of specified goods under the said MICECA is subject to the exporter in Malaysia, furnishing to the Indian Importer a certificate of Origin of the specified goods as originating from Malaysia. The importer in India has to submit in addition to Bill of Entry, the Certificate of Origin in original issued by the designated authority in Malaysia. Thus, the petitioner company has been fully complying with all the statutory formalities required to import the specified goods viz., unbranded gold jewellery from Malaysia under the said MICECA and to avail the duty concessions granted under the same. But, till date, the respondents have not assessed the goods.

3.3. It is claimed by the petitioner that prior to consignment, the respondents assessed the goods that were imported by the petitioner company and cleared the same under section 47 of the Customs Act, 1962 and the importer has paid appropriate import duty assessed i.e. 1% Special Additional Customs Duty as per the said MICECA. Apart from the same, so far as the exemption of the customs duty of 16% is concerned, the respondent authority is insisting for 20% of Bank Guarantee for verifying the genuineness of the Certificate of Origin issued by the competent authority in Malaysia under the said MICECA without any specific order. However, all of a sudden, by way of email communication, the respondents are insisting for execution of 100% of the Bank Guarantee towards duty payable in the normal course in so far as the consignment imported by the petitioner company under the said MICECA under Bill of Entry No.INMAA4 9934208 dated 17.7.2015. The said acts of the respondents are contrary to law. Hence, the petitioner is before this Court.

4. The learned counsel for the petitioner submits that for the purpose of release of gold jewellery, the Bill of Entry has been taken into consideration and without processing the Bill of Entry so as to arrive the duty, the web related detail as far as the same Bill of Entry is concerned has been taken and a oral direction was issued insisting for execution of 100% of the Bank Guarantee towards duty payable. Referring to Section 17 of the Customs Act, the learned counsel submitted that the respondent if not agreeing with the self assessment of the petitioner, should reassess within 15 days and pass a speaking order. Having not resorted to pass such an order, the demand of Bank Guarantee is illegal and beyond jurisdiction. The learned counsel also brought to the notice of this court that out of 8 consignments, 6 were cleared on execution of 20% Bank Guarantee and payment of 1% special additional customs duty and for the remaining, a different stand has been taken by the respondent.

5. According to the learned Counsel for the petitioner, the respondents cannot take such a stand, by relying the web-portal communication for insisting 100% bank guarantee, which violates the agreement entered between India and Malaysia, which is the basis for the transaction. In support of his contention, the learned counsel relied judgments reported in 2011 (269) ELT 145 (SC) (Banzal Wire Industries Ltd. v. State of U.P.), 2011(265) E.L.T.17 (S.C.) [Commissioner of Customs v. Sayed Ali] and an unreported case made in W.P.No.17052 (W) of 2015, dated 4.8.2015 [M/s.N.D.Diamond & Anr. v. Commissioner of Customs (Airport) & Anr.] of the Calcutta High Court and prayed for appropriate directions by this court.

6. The learned Additional Solicitor General appearing for the respondents, who filed the counter affidavit, submitted that the writ petition is premature in nature i.e., without approaching the authorities, the petitioner has filed this writ petition. According to section 17 of the Customs Act as well as section 234, the respective officials have to safeguard the revenue and unless and otherwise the conditions stipulated thereon is complied, there is no question of release of consignment, until necessary assessment followed by orders that are to be passed by the authorities. The learned Additional Solicitor General also submitted that the petitioner company so far has not approached the authorities and no communication so far has been issued in this regard. In support of his contention, the learned Additional Solicitor General relied upon the following judgments :-

(i) 1996 (87) E.L.T.19 (S.C.) [Ranadey Micronutrients v. Collector of Central Excise;

(ii) 2004(165) E.L.T. 258 (S.C.) [Commissioner of Customs, Calcutta v. Indian Oil Corporation Ltd.) ;

(iii) 2013(4) SCC 340 [State of Orissa and others v. Mesco steels Limited and another) ; and

(iv) Unreported case in W.P.No.39807 of 2002, dated 19.09.2011 [R.N.Prasad v. Indian Overseas Bank, Chennai and others].

7. Replying to the learned Additional Solicitor General that the petitioner did not approach the authorities, the learned counsel for the petitioner submitted that many communications dated 9.1.2015, 13.2.2015, 23.2.2015 and 11.5.2015 have been placed and so far not considered by the respondents. The learned Additional Solicitor General in reply submitted that those representations, if submitted, would be considered followed by necessary orders. The said submission made by the learned Additional Solicitor General is recorded. The counsel for the petitioner also submitted that the petitioner will appear before the respondents with materials.

8. Hence, to give quietus to the issue, the petitioner is directed to approach the authorities for the purpose of clearance of goods by proper representation within a week from the date of receipt of a copy of this order and the respondents are directed to hear the petitioner and pass necessary orders within a period of two weeks thereafter.

With the above directions, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

Rj

To

1. The Commissioner of Customs (Imports)
Air Cargo Complex,
Meenambakkam,
Chennai - 600 027

2. The Assistant Commissioner of Customs (Imports),
Appraising Group No.III,
Air Cargo Complex,
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Chennai - 600 027

3. The Appraising Officer of Customs (Imports),
Appraising Group No.III,
Air Cargo Complex,
Meenambakkam,
Chennai - 600 027

+1 cc to Mr.A.P.Srinivas, Advocate, sr.43773
+1 cc to M/s.Mecgan Law Firm, Advocate, sr.43839

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tej(co)
kra(31/08)