IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.07.2015

CORAM:

THE HONOURABLE MR. JUSTICE T.RAJA

W.P.Nos.23070 to 23074 of 2015
and
M.P.Nos.1,1,1,1 and 1 of 2015

W.P.No.23070 of 2015

M/s.Toptex Exports,
represented by its partner,
T.Mathivanan,
No.1, K.M.G.Nagar,
II Street, Velliankadu,
Tirupur - 641 604. ...Petitioner

vs.

The Commissioner of Customs,
Chennai - VII Commissionerate,
New Custom House, Meenambakkam,
Chennai - 600 027. ...Respondent

W.P.No.23071 of 2015

T.Mathivanan ...Petitioner

vs.

The Commissioner of Customs,
Chennai - VII Commissionerate,
New Custom House, Meenambakkam,
Chennai - 600 027. ...Respondent

W.P.No.23072 of 2015

P.Thangavelu ...Petitioner

vs.

The Commissioner of Customs,
Chennai - VII Commissionerate,
New Custom House, Meenambakkam,
Chennai - 600 027. ...Respondent

W.P.No.23073 of 2015

D.Senthilkumar ...Petitioner

vs.

The Commissioner of Customs,
Chennai - VII Commissionerate,
New Custom House, Meenambakkam,
Chennai - 600 027. ...Respondent

W.P.No.23074 of 2015

Smt.Jamuna ...Petitioner

vs.

The Commissioner of Customs,
Chennai - VII Commissionerate,
New Custom House, Meenambakkam,
Chennai - 600 027. ...Respondent

Prayer:- Writ Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records relating to the impugned order in Original No.381/2015-AIR dated 31.3.2015 (date of issue 8.5.2015) passed by the respondent and quash the same as without authority of law, contrary to the provisions of the Customs Act and unsustainable

For petitioners : Mr.K.Jayachandran

For respondent : Mr.A.P.Srinivas, Standing Counsel

ORDER

All these Writ Petitions have been filed by the petitioners on various grounds seeking to quash the Order in Original No.381/2015-AIR dated 31.3.2015 of the respondent, whereby the notification benefit in terms of 21/2002-Cus dated 01.03.2002 (Sl.No.167,140) claimed/availed by them in respect of the goods imported vide 2 Bills of Entry as detailed in the Annexure - N and O to the notice has been denied and the goods imported has been reassessed and consequential orders passed.

2. Mr.K.Jayachandran, learned counsel for the petitioner inter alia would submit that the first petitioner is the firm and the other petitioners are the partners of the firm and the impugned order was passed by the respondent by way of a common order for more than 40 persons, without proper finding about the role of each individual

person on whom the levy is made. The impugned order is in violation of the provisions of Section 114A and 114AA of the Customs Act. Adding further, the learned counsel would submit that the impugned order passed by the respondent is not even signed by the Commissioner of Customs/respondent.

3. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader (Taxes) and perused the impugned order.

4. As the impugned order on the face of it clearly shows that that if the assessees are aggrieved, they can prefer an appeal to the appellate authority, this Court is not inclined to entertain these Writ Petitions on the ground that an efficacious alternative remedy is available to the parties.

5. At this stage, it is brought to the notice of this Court by the learned counsel for the petitioner that, in similar circumstances, in W.P.No.12546 of 2015 reported in 2015 (7) TMI 391 [Fifth Avenue Sourcing (P) ltd., Versus Commissioner of Service Tax], this Court directed the appellate authority not to insist on pre-deposit of 7.5% of the tax amount confirmed in the event of filing appeals.

6. On the other hand, it is submitted by Mr.A.P.Srinivas, learned standing counsel for the respondent that the identical issue raised in a Writ Petition is pending before a Bench of this Court and in the event of passing final order in the appeals to be preferred by the petitioners, the petitioners are bound by the decision to be rendered in such Writ Petition.

7. In the light of the above facts, this Court is not inclined to entertain the Writ Petitions and accordingly, the Writ Petitions are dismissed and connected Miscellaneous Petitions are also dismissed. No costs. The petitioners are permitted to file appeal against the impugned order, within a period of two weeks from the date of receipt of a copy of this order. In event of filing appeals, such appeals shall be entertained without insisting on pre-deposit of 7.5% of the tax amount confirmed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

asvm

Note to Office:

The Registry is directed to return the original impugned order copy to the petitioners on obtaining acknowledgement.

To

The Commissioner of Customs,
Chennai - VII Commissionerate,
New Custom House, Meenambakkam,
Chennai - 600 027.

1 CC to Mr.A.P.Srinivas, Advocate SR.No. 39481

1 CC to Mr.K.Jayachandran, Advocate SR.No. 38955

W.P.Nos.23070 to 23074 of 2015 and
M.P.Nos.1,1,1,1 and 1 of 2015

PSI (18.08.2015)