IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.10.2015

CORAM :

THE HONOURABLE Mr.JUSTICE R.MAHADEVAN

W.P.No.26901 of 2015
and
M.P.No.1 of 2015

Refex Industries Ltd.,
rep. by its Deputy General Manager Mrs.U.Lalitha,
Accounts and Commercial,
having Coporate Office at
67, Bazullah Road,
T.Nagar,
Chennai-600 017. ... Petitioner

Vs.

1.The Chief Commissioner of Customs,
Chennai Customs House,
Customs House, 60 Rajaji Salai,
Chennai-600 001.

2.The Commissioner of Customs (Import),
Customs House,
60 Rajaji Salai,
Chennai-600 001.

3.The Commissioner of Customs (Imports-Seaport),
Special Intelligence and Investigation Branch,
Customs House,
60 Rajaji Salai,
Chennai-600 001. ... Respondents

Prayer: Writ Petition has been filed under Article 226 of the Constitution of India, praying for issuance of Writ of Mandamus, directing the respondents to permit the petitioner to re-export two ISO Tanks container Nos.2FLU2013012 and ZFLU2013080 containing Refrigerant Gas R142B imported by the petitioner from China under Bill of Entry Nos.4926248 and 4925897 both dated 18.03.2014 expeditiously.

For Petitioner : Mr.Vijayanarayanan, Senior Counsel for M/s.G.Kanthimathi

For Respondents : Mr.V.Sundaresavan, Standing Counsel for Customs Department

ORDER

This writ petition has been filed praying for a direction to the respondents to permit the petitioner to re-export two empty ISO Tanker containers Nos.2FLU2013012 and ZFLU2013080, imported by the petitioner from China, under Bill of Entry Nos.4926248 and 4925897 both dated 18.03.2014, expeditiously.

2.The case of the petitioner is that Refrigerant Gas R142B was imported by the petitioner from China, in two ISO Tanker containers Nos.2FLU2013012 and ZFLU2013080, under the Bills of Entry Nos.4926248 and 4925897 both dated 18.03.2014. After import, for certain clarification, the goods were not permitted to be cleared by the Customs Department. In order to get the position clarified, the petitioner deputed one of its officers to meet the Commissioner of Customs (Imports) on 28.03.2014. Only then, the petitioner was given to understand orally that the Special Intelligence and Investigation Branch of the Customs Department wanted to test the goods on a reasonable belief that there might be a mis-declaration and hence the delay. The petitioner vide their letter dated 29.03.2014 stated to the respondents that the imported goods to be tested before clearance and that there is no testing facility for R142B and the samples to be drawn and sent to Singapore for testing, as the regular Refrigerant Identifier could not detect the same.

3.Thereafter, since necessary arrangements for drawal of sample gas for testing were not taken, summons dated 06.05.2015 were issued to the Managing Director of the petitioner-Company to appear before the Department. According to the respondents/Department, the Managing Director of the petitioner-Company did not appear before the Department. The petitioner-Company came forward to draw/decant sample of the imported refrigerant gas from the two containers for testing by Customs at the Balmer Lawrie CFS itself by using mobile decanting unit with pump to fill the sample in 10 kg cylinder as the ISO tanks were pressurized.

4.After passing of some time, the petitioner-company arranged for testing of the sample. Accordingly, on 05.06.2014, when the samples were attempted to be taken, it was noticed that pressure gagues fitted on the outlet valves of both the containers were found to show zero reading and the glass portion of the pressure gauges was found to be broken/cracked; the same was informed to the authorities. But, though the authorities proceed with the enquiry, no decision was taken by the authorities so far.

5. Since, even according to the respondents, entire gas contained in the tanker containers has leaked and the containers are said to be empty, the petitioner moved an application before the Customs Department for the purpose of early release of the containers, so as to avoid further demurrage to be paid to the authorities. Since the said application was also not considered by the respondents, the present writ petition has been filed by the petitioner seeking the relief as stated supra.

6.The learned senior counsel appearing for the petitioner submitted that the petitioner's representative met the Commissioner of Customs (Imports) and explained in detail all the relevant information and also gave a written undertaking dated 08.05.2014, whereby the petitioner undertook to provide the Department with all concerned documents along with the assembling of a mobile pump with motor and pressure gauge for drawing sample by 16.05.2014 and move it to the Container Freight Station on the Department's confirmation. As per the undertaking, all papers connected with the subject import along with the petitioner's background, etc. were sent to the Appraiser/Superintendent of the Special Intelligence and Investigation Branch of the Customs Department vide the petitioner letter dated 08.05.2014 itself.

7.The learned senior counsel for the petitioner would further submit that Sub-sections 1 & 2 to Section 110 of the Customs Act provides the procedures to be adopted for the purpose of seizure and confiscation of the products and the said provision gives six months time to complete the procedures and also extension of another six months. But, in the instant case, no such procedures were followed by the authorities for seizure and confiscation of the products during the relevant period of time. Though the containers are said to be empty, they were not released by the authorities. Their inaction has resulted in the enormous delay in the release of the said containers. The respondents are duty bound to follow the statutory provisions in releasing the import made by the petitioner. The inaction of the respondents has resulted in huge financial loss in respect of the demurrage payable as well as the loss of business for the petitioner. It is therefore necessary to direct the respondents to release imported containers by the petitioner under proper and valid documents immediately and upon payment of necessary statutory charges, if any. Thus, the learned senior counsel appearing for the petitioner seeks for appropriate direction to the respondents.

8.The respondents have filed a counter affidavit, stating that a specific alert was received from Anti-Smuggling Unit, Central Board of Excise & Customs that the petitioner-Company is likely to smuggle prohibited refrigerant gas R-22 through Chennai Seaport; hence, the two tanker containers declared to be containing refrigerant gas R142B imported by the petitioner from China, against which two Bills of Entry Nos.4926248 and 4925897 both dated 18.03.2014 had been filed by the petitioner-Company, were taken up for investigation. It is stated by the respondents, necessary enquiry procedures are to be completed and samples have not been taken so far; thus, they require further time to consider the claim of the petitioner. It is also stated in the counter affidavit that the writ petitioner has not produced the required documentary evidence, so as to complete the enquiry proceedings.

9.The learned counsel for the respondents has also submitted that the petitioner may be directed to appear before the respondents with adequate document evidence; thereafter, necessary order would be passed by the respondents.

10. I have heard the rival contentions made by the learned counsel on either side and perused the materials available on record.

11.Admittedly, there is no gas available in the containers and the petitioner's claim is also to release of the containers. Hence, to give quietus to the issue, though the petitioner claims that all the documents had already been furnished on 08.05.2014 itself and the respondents stoutly denies the same, in the interest of justice, this Court directs the respondents to give notice to the petitioner, listing out the documents to be furnished by the petitioner, within a period of one week from the date of receipt of a copy of this order. On receipt of such notice, the petitioner shall produce those documents before the respondents within one week thereafter. On production of documents by the petitioner, the empty containers shall be released by the respondents forthwith. It is always open to the respondents to complete the necessary adjudication proceedings as provided under law.

With the above directions, this writ petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

sd/-
ASSISTANT REGISTRAR(CS-II)

/ TRUE COPY /

SUB-ASSISTANT REGISTRAR

ssv

To

1.The Chief Commissioner of Customs,
Chennai Customs House,
Customs House, 60 Rajaji Salai,
Chennai-600 001.

2.The Commissioner of Customs (Import),
Customs House,
60 Rajaji Salai,
Chennai-600 001.

3.The Commissioner of Customs (Imports-Seaport),
Special Intelligence and Investigation Branch,
Customs House,
60 Rajaji Salai,
Chennai-600 001.

+1 CC to Mr.V.Sundaresavan Advocate. SR.NO.57097
+1 CC to Mr.G.Kanthimathi Advocate. SR.NO. 57367

W.P.No.26901 of 2015
and
M.P.No.1 of 2015

CO-
JD 16/10/2015