IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.10.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

WP.No.29443 of 2015
MP.No.1/2015

M/s.Madras Steel Agencies represented by its
Partner B.Mohanlal Bhandari,
Chennai - 600 003 .. Petitioner

Vs

1. The Commissioner of Customs, Group 4
Customs House, 60, Rajaji Salai, Chennai-1

2. The Deputy Commissioner of Customs, Group 4
Customs House, 60, Rajaji Salai, Chennai-1 .. Respondents

Prayer:- This Writ Petition is filed under Article 226 of the Constitution of India, for the relief as stated therein.

For Petitioner : Mr.A.K.Jayaraj

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

ORDER

This Writ Petition is filed to issue a Writ of Mandamus to direct the Respondents to release the goods viz. 14,279 Kgs of cold rolled stainless steel sheets, imported vide Bill of Entry No.2479824, dated 4.9.2015, by extending Preferential Rate of Duty.

2. The case of the Petitioner is that the Petitioner imported 14,279 kgs of cold rolled stainless steel sheets from Malaysia to the tune of USD 29,985.90 and the said goods were shipped from M/s.Bahru Stainless Sdn., Bhd, Malaysia, vide invoice No.E15 04348, dated 18.08.2015 and filed Bill of Entry No.2479824, dated 04.09.2015 and claimed for clearance of the goods for home consumption. On the arrival of the goods at Chennai Harbour, the Petitioner filed Bill of Entry for home consumption and sought for clearance of the goods, by producing necessary evidence to the effect that the goods are of Malaysian Origin

and also produced the certificate in the Form specified by customs notification No.189/2009 in terms of the Preferential Trade Agreement Rules 2009 and claimed the benefit of concessional rate of duty. The Petitioner also submitted Asean-India Free Trade Area Preferential Tariff certificate of Origin issued by Ministry of International Trade and Industry, Malaysia, certifying that the declaration made by the exporter is correct and the exporter had complied with the origin requirements specified for these goods. Already identical goods were released for the Petitioner and also for others, accepting the above FTA certificate by granting the preferential rate of duty. The above goods are freely importable goods and there is no restriction or prohibition for importing the same. Though the goods were examined and found tallied with the declaration and description made by the Petitioners and despite several representations for release of the goods, the Respondents are withholding the goods without there being any basis. Hence, this Writ Petition has been filed.

4. The learned counsel for the Petitioner contended that under Section 17 of the Customs Act, the importer is entitled to have the goods examined, assessed and cleared without undue delay and that the customs authorities are under statutory obligation to perform their duties without any delay, so that the Petitioner need not have to pay any demurrage charges and that once the goods have arrived at the Port of destination, the same should be cleared on proper evidence and that though the Petitioner furnished all documents that are necessary for processing and assessing the Bill of Entry and ordering the release of the goods, the Respondents are withholding the goods without any basis and hence, prayed for release of the goods in question.

5. The learned Standing Counsel for the Respondents submitted that the writ jurisdiction is premature and the Petitioner, without appearing before the authorities, straight away approached this Court, by filing this Writ Petition and sought for dismissal of this Writ Petition.

6. This court heard and considered the submissions made by the learned counsel on either side and also perused the materials placed on record.

7. For release of the goods in question, the contentions put forth by the Petitioner in this Writ Petition are that any claim as eligible for preferential treatment shall be supported by certificate of origin as per specimen in the attachment to the Operational Certification Procedure (OCP) issued by a Government Authority designated by the Exporting Country. It is not the case of the Respondents that the certificate produced is not in the proper format or that the certificate lacked the requisite information and hence, the goods are to be released. The Department cannot contend that there is no factory producing the goods in Malaysia and the supplier Bahru Stainless Steel is an International Company of Spain and known as

Aceninox S.A., Spain and this Company, with agreement between them and NISSHIN STEEL set up a factory in Malaysia as Bahru Stainless Steel and in December 2010, the coil was processed and this factory started with initial production of 24000 MT of cold rolled stainless steel sheets and the above information is available in www.misif.org.my/index, which indicated that the product manufactured is Stainless Steel C.R and H.R coils, sheets and plates. The quality is certified by TUD SUD Management Services, Gmbh. and the management system is ISO 9001-2000 certified by Lloyd's Register Group and the above information leaves no room to doubt whether the goods are manufactured in Malaysia or nor and if the AIFTA certificate is not accepted by the customs authority in the importing country, then in terms of procedure 7(C) of operational certification procedure, the certificate shall be marked in box 4 and the original AIFTA certificate should be returned to the issuing authority within a period of two months and the issuing authority should be notified of the grounds for the denial of preferential treatment and no such procedure had been followed by the Respondent in spite of abundant built-in-safeguards in the PTA Rules 2009.

8. However, as rightly contended by the learned Standing Counsel for the Respondents, the Petitioner, without appearing before the authorities concerned, straight away approached this Court, by filing this Writ Petition. The learned standing counsel for the Respondents also submitted that the claim of the Petitioner for preferential duty has not been negatived till date and the writ petition is premature. Therefore, the Petitioner can approach the authorities concerned and put forth all his contentions raised in this Writ Petition before them, related to release of goods on payment of preferential duty, who, in turn, shall consider the same and pass orders, on merits and in accordance with law, within one week from the date of receipt of a copy of this order.

9. With the above directions, this Writ Petition is disposed of. No costs. Consequently, the connected MP is closed.

Srcm

Sd/-
Assistant Registrar (CS-III)

/True Copy/

Sub-Assistant Registrar

To:

1. The Commissioner of Customs,
   Group 4, Customs House,
   60, Rajaji Salai,
   Chennai - 600 001

2. The Deputy Commissioner of Customs,
   Group 4, Customs House,
   60, Rajaji Salai,
   Chennai - 600 001

+1 C.C. to MR.A.K.Jayaraj, Advocate in Sr.56674

+1 C.C. to MR.A.P.Srinivas, Advocate in Sr.56530

WP.No.29443 of 2015

RV(CO)
sd : 15/10/2015