

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.03.2015

CORAM:

The Honourable Mr. Justice S.VAIDYANATHAN

Writ Petition No. 3163 of 2015

Cooper Bussmann India Private Ltd
Rep. by its Manager - Finance Mr A Devaraj
2, EVR Street, Sedarapet,
Pondicherry 605 111.

.. Petitioner

Vs

1. Assistant Commissioner of Customs (Group 7 A)
Customs House,
60, Rajaji Salai,
Chennai 600 001.

2. The Superintendent of Central Excise
Range E, Pondicherry II Division,
No:1, 3rd Cross Street, Brindavan,
Pondicherry - 605 013

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, for the issuance of a WRIT OF CERTIORARI FIED MANDAMUS calling for the records in F.No.S.Misc/118/2012-Gr 7A dated 13.01.2015 passed by the 1st Respondent and quash the same as arbitrary and illegal and direct the 1st Respondent to remove the "alert" created in the system.

For Petitioner : Mr. Joseph Prabakar

For Respondents : Mr. A. P. Srinivas

ORDER

The petitioner has come forward with the present writ petition, challenging the order, dated 13.1.2015 passed by the first respondent, in and by which, 'alert' has been issued in the EDI system of the Customs Department in respect of the petitioner company since the Jobbing Bonds were pending and the petitioner was directed to submit the documents, viz., Bill of entry, shipping bill, export invoice, end-use certificate, BRC, ARE, etc.

2. The petitioner company is engaged in manufacture of high rupturing capacity fuses and fuse components in their unit situated at Pondicherry. The petitioner company imported goods under Customs

Notification No.32/97, dated 1.4.1997 which provides for exemption from customs duty for goods imported to India for the purpose of carrying out job work in India and for export of the job worked (finished) product, subject to certain conditions mentioned therein.

3. Having imported the goods for job work, it appears that the petitioner claimed exemption for the period 2000 to 2004 by making an application to the second respondent along with required documents apart from executing a bond with the Excise Department in Pondicherry. According to the petitioner, the said application was accepted. Thereafter, the petitioner company exported the finished goods under the cover of export invoice by providing the details of export to the second respondent along with the corresponding details of input materials originally imported duty-free and which were utilized towards the export consignment, giving cross-reference to bills of entries under which the goods were originally imported. It is also stated that whenever export could not be made within the stipulated period of six months, the petitioner company used to apply for extension of the period. The petitioner submitted the consumption details of the raw materials and components imported under various bills of entry under Notification No.32/97 and obtained end use certificate, thereby proving that the imported goods were in fact used for the intended purpose of job work in India and exported.

The respondents department at Pondicherry had also issued end use certificate for all the imports made under Notification No.32/97. While so, according to the petitioner, an 'alert' was issued in the EDI system of the customs department in Chennai Port in respect of the petitioner concern, thereby prevented the petitioner from exporting and importing the goods through the port. According to the petitioner, though the petitioner had fulfilled all the conditions with reference to imports made during the period 2000 to 2002 and also complied with all the requirements, the said alert was purportedly created for non-submission of documents relating to imports made under Notification 32/97. Later, based on the internal note dated 22.10.2013, alert was removed from the system. Thereafter, the petitioner resumed normal imports and exports through the Chennai Port.

4. While so, the second respondent issued a letter dated 16.9.2013, wherein, it was stated that the first respondent had found that in certain cases, the petitioner had exported the finished goods after six months and thereby, it is liable to pay interest for the delayed period as stipulated in the Notification. Accordingly, the second respondent sought for copies of permission obtained from the second respondent for allowing export beyond six months. Thereafter, on 7.11.2013, the second respondent issued a letter to the petitioner directing to produce the copies of requests made by the petitioner for extension of time for export beyond six months and copies of permission obtained for the same. While the petitioner was in the process of collecting the documents required, the first respondent

once again created 'alert' in the system for the very same reason, namely, non-submission of documents relating to imports made under the notification. By letter dated 10.1.2015 addressed to the first respondent, the petitioner submitted that the petitioner has complied with all conditions and sought for removal of alert. However, by the order, dated 13.1.2015, the first respondent directed the petitioner to submit the documents, viz., Bill of entry, shipping bill, export invoice, end-use certificate, BRC, ARE, etc. and provided time till 7.2.2015. Hence, the writ petition.

5. Assailing the impugned order of the first respondent, the learned counsel appearing for the petitioner would contend that without affording an opportunity of being heard to the petitioner, the impugned order has been passed violating the principles of natural justice and that the petitioner had already submitted all the documents which were also recorded in the internal note dated 22.10.2013 and despite the same, creating the alert in respect of the petitioner concern is arbitrary. He has further contended that the second respondent was informed about all the details relating to the import consumption of imported raw materials and the export of finished products made by the petitioner and that it had exported the finished goods within the stipulated period mentioned in the notification, however, in certain cases, where export was delay, the petitioner sought for permission and after getting approval from the department, made exports during the relevant period, 2000 to 2002. Therefore, the learned counsel for the petitioner would contend that if at all the petitioner did not obtain permission for export made beyond a period of six months as alleged by the respondents, it is for the respondents to take action by issuing a show cause notice as per the provisions of the Act and without resorting the same, creating alert is arbitrary and illegal.

6. Though no counter has been filed on behalf of the respondents, however, the learned counsel appearing for the respondents would submit that the respondents have been repeatedly asking the petitioner to clarify whether necessary permission was accorded to the petitioner for delay in re-export and submit all the documents pertaining to payment details with appropriate worksheet and copies of the permission so obtained from the jurisdictional Assistant Commissioner. But the petitioner had not produced any records to substantiate its claim that after getting extension in respect of delayed exports, the petitioner made exports.

7. Heard the learned counsel for the petitioner and the respondents and perused the entire records.

8. Notification 32/97-Cus.dated 01.04.1997 has been issued by the Government of India, exempting the goods imported into India from the whole of the duty of customs leviable thereon which is specified in the first Schedule to the Customs Tariff Act, 1975 (51 of 1975)

and from whole of the additional duty leviable thereon under Section 3 of the said Customs Tariff Act, subject to certain conditions, viz., the goods so imported, including resultant products are re-exported to the supplier of the goods or to any other person which the said supplier may specify within six months from the date of clearance or within such extended period as the Assistant Commissioner of Customs may allow; that the jobbing is undertaken in accordance with the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules 1996, provided that where the jobbing is to be undertaken by or through cottage industry without being confined to any specific premises, the importer shall executed a bond with such surety or security in such form and for such sum as may be specified by the Assistant Commissioner of Customs, binding himself to pay on demand an amount equal to the duty leviable on the goods imported.

9. According to the petitioner, it had imported the goods for job work and claimed exemption under Notification No.32/97 for the period 2000 to 2004 by submitting the application to the second respondent along with required documents and also executed bond with the Excise Department in Podicherry in Customs, which was accepted and transmitted to the first respondent and the petitioner imported the goods from time to time by claiming exemption, within stipulated period of six months and wherever, there was delay, the petitioner obtained extension of the period and thereafter, it had made exports.

10. It is the case of the respondents that as per the Notification No.32/97, the petitioner had made certain re-export during the year 2000 to 2004 beyond the period of six months and thereby a Notice dated 16.9.2013 has been issued to the petitioner by the second respondent, calling upon the petitioner to pay the interest for the delayed period as stipulated in the Notification. Pursuant to the same, it appears that the petitioner addressed a letter dated 28.10.2013, stating that the export of job worked goods after the expiry of six months was with permission from the Assistant Commissioner. Considering the same, by proceedings dated 7.11.2013, the second respondent asked the petitioner to furnish the copies of the requests made by the petitioner for extension of period beyond six months and also copies of such permission if granted by the Assistant Commissioner of Customs. Thereafter, since the petitioner failed to produce the documents as sought for above by the second respondent, it appears an alert in respect of the petitioner concern was created. By letter dated 26.12.2014, the petitioner requested the respondents to remove the alert while assuring that they would get clarification from the Central Excise Department. Considering the request made by the petitioner, by proceedings dated 2.1.2015, the first respondent has granted the permission for importation till 12.1.2015 subject to the petitioner producing all the relevant documents on or before 11.1.2015 in connection with the 29 Bills of

Entry and payment of duty and interest for the exports carried your beyond the stipulated period of six months in terms of the Notification. It has also been specifically warned that failing to produce the documents, necessary action will be initiated under Section 142 of the Act and that no more permission would be given. Pursuant to the same, the petitioner addressed a letter dated 10.1.2015 to the first respondent, stating that the petitioner had already submitted the End Use Certificate to the Customs Department, Chennai in the year 2002/2004 itself and the same set of documents were once again submitted to the Customs authorities in October 2013 as well. While submitting documents in respect of 27 bills out of total 29 bills, the petitioner also stated that since the matter pertains to a period of more than 10 years old, retrieval of documents at Excise department is taking considerably long time and accordingly, requested 15 additional days to trace the balance documents. However, the impugned order, dated 13.1.2015 has been passed by the first respondent, in and by which, 'alert' has been issued in the EDI system of the Customs Department in respect of the petitioner company since the Jobbing Bonds were pending and the petitioner was directed to submit the documents, viz., Bill of entry, shipping bill, export invoice, end-use certificate, BRC, ARE, etc. on or before 7.2.2015.

11. Though the petitioner contended that almost all the documents were already furnished to the authorities, but it was denied by the respondents and created alert and therefore, this is a disputed question of fact, which this Court is refrained to deal with the same and it is for the petitioner prove the same before the authorities. However, having regard to the facts and circumstances narrated above, this Court is not inclined to go into the merits of the case since the petitioner has been directed to submit the documents, which were admittedly pertaining to the period more than a decade ago, the difficulty expressed by the petitioner in retrieving the documents, appears reasonable and considering the same, this Court is of the view that the impugned order shall be set aside for the present and the petitioner is directed to produce all the relevant documents which were sought for by the respondents, within a period of one month from the date of receipt of a copy of this order.

12. Accordingly, the Writ Petition is allowed and the respondents are directed to lift the alert in respect of the petitioner concern for a period of one month from the date of receipt of copy of this order and in the meanwhile, the petitioner is directed to produce all the relevant documents before the authorities and establish its claim for removal of the alert. In case the petitioner fails to produce the documents within a period of one

month from the date of receipt of a copy of this order, it is needless to mention that the respondents are at liberty to restore the alert in respect of the petitioner concern. No costs. Consequently, connected MPs are closed.

-s/d-

Assistant Registrar (CO)

Dt:6/3/2015

True Copy

Sub-Assistant Registrar

To

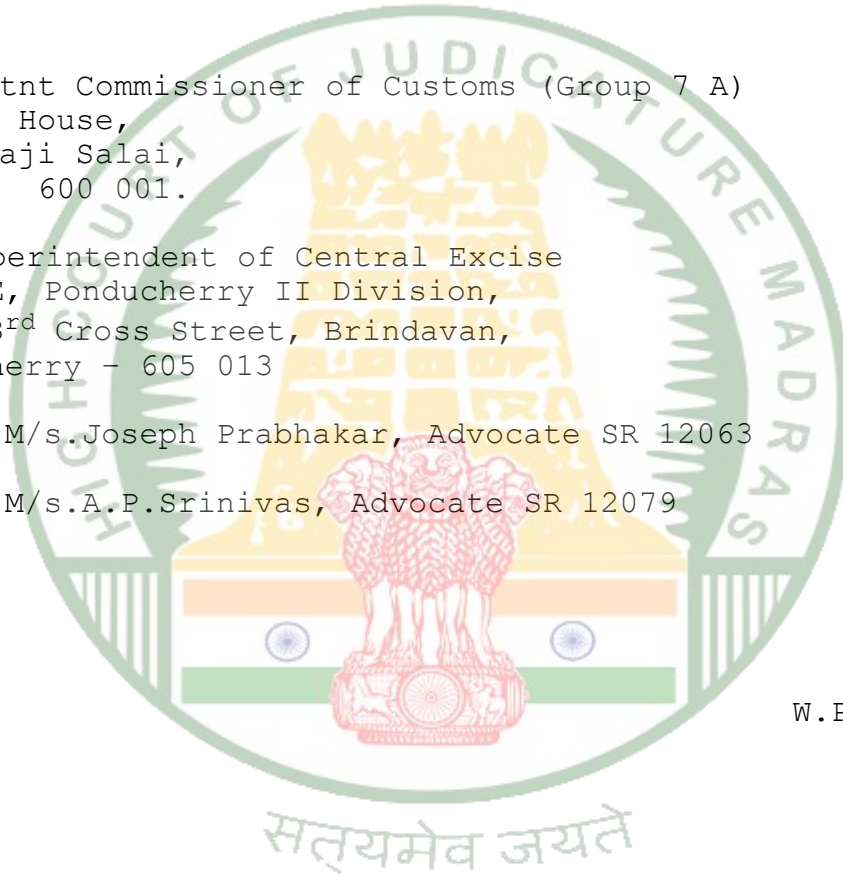
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+ 1 cc to M/s. Joseph Prabhakar, Advocate SR 12063

+ 1 cc to M/s. A.P. Srinivas, Advocate SR 12079

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