IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 24.02.2015

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.4202 of 2015

M/s.King Kaveri Trading Company,
A 19/1, Maitril Park, Sion Trombay Road,
Chembur Mumbai-400 071. .. Petitioner

Vs.

1.Union of India,
represented by its Secretary,
Ministry of Finance,
Department of Revenue,
New Delhi 110 001.

2.Commissioner of Customs (Seaport-Import),
Customs House, NO.60, Rajaji Salai,
Chennai-600 001. .. Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the second respondent to permit clearance of the goods without insisting on Bank Guarantee for 50% of the Anti Dumping Duty proposed.

For Petitioner : Mr.Lakshmi Kumaran

For Respondents : Mr.A.P.Srinivas

O R D E R

The petitioner has come forward with the aforesaid prayer.

2.The contention of the petitioner is that the petitioner was a party to the earlier round of litigation and a similar issue was raised before the Mumbai Tribunal and the Tribunal came to the conclusion that the imported goods are used as wheels for buses and trucks and it could also be used as wheel for trailers and there is no evidence either by way of technical expert's opinion or by way of commercial invoices or averments of traders, who deal in such goods, have been adduced by the Department to substantiate the observation and ultimately came to the conclusion that the Anti-Dumping Duty demanded from the importer, cannot be granted. When the petitioner pointed out the decision of the Mumbai Tribunal, Customs House, Calcutta immediately ordered for re-fund of the security deposit made under the bill of entry therein.

3.Learned counsel for the petitioner further contended that when the Tribunal has set aside the levy of Anti-Dumping Duty in respect of Trailer Parts Wheel Rims imported into India, which has become final and pursuant to the orders of the Tribunal, the Customs House, Calcutta allowed them to clear the goods without payment of Anti-dumping Duty at the declared value, the demand made by the Customs House, Chennai is illegal. The petitioner further contended that they are not quoting any precedent with regard to any other Industry/ company and it is their own company in which they got a favourable order from the Tribunal, which has been accepted by the Customs House, Calcutta. He further contended that the demand made by the Deputy Commissioner of Customs at Chennai by order dated 19.09.2014 is not correct.

4.Learned counsel for the respondents in reply contended that the petitioner will have to satisfy the authority and have to establish that the Anti-Dumping Duty imposed on the petitioner, is not correct. That apart the petitioner have got an alternative remedy by way of approaching the Tribunal and the writ petition is not a only remedy.

5.Heard both sides.

6.Since the petitioner got a favourable order from the Tribunal, Mumbai, which has been accepted by the Calcutta Customs House for the very same products, which has been imported, I direct the petitioner to participate in the assessment proceedings and the officer concerned and shall take into account the orders passed by the Tribunal, Mumbai and also the decision taken by the Calcutta Customs Office. This Court makes it clear that the petitioner need not comply with the pre-deposit, as required by the authority at Chennai. The Authority is directed to hear the petitioner in person, after giving an opportunity of hearing and to take into account the decision of the Mumbai Tribunal reported in 2012 (276) E.L.T. 371 (Tri. - Mumbai) (King Kaveri Trading Co. vs. Commissioner of Customs (Import), Nhava Sheva) and the decision taken by the Customs House, Calcutta and to pass appropriate orders, on merits and in accordance with law, within a period of fifteen days from the date of receipt of a copy of this order. This Court also makes it clear that if no order is passed as stated supra, the petitioner shall be allowed to clear the goods lying in the Customs House. The writ petition is disposed of accordingly. No costs. Consequently, connected M.P. is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vga

To

1.The Secretary,
Union of India,
Ministry of Finance,
Department of Revenue,
New Delhi 110 001.
2.Commissioner of Customs (Seaport-Import),
Customs House, NO.60, Rajaji Salai,
Chennai-600 001.

1 cc to Mr. Lakshmi Kumaran,Advocate, SR.No.9887
1 cc to Mr.A.P.Srinivas ,Advocate, SR.No.9943

W.P.No.4202 of 2015

sv(co)
pmk.26.2.2015