IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2015

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THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P. No.4953 of 2015

M/s.Blue Breeze Enterprises,
represented by its Partner G.Balaji ... Petitioner

Vs

The Assistant Commissioner of Customs,
ICD, SF.No.129, Poondi Ring Road,
Chettipalayam, Tirupur-641 652. ... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of mandamus directing the respondent to pass a speaking order in respect of the application dated 29.11.2013 filed for amendment of the shipping bills.

For Petitioner : Mr.Hari Radhakrishnan
For Respondent : Mr.T.Chandrasekaran

O R D E R

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondent.

2.The writ petition has been filed directing the respondent to pass a speaking order in respect of the application dated 29.11.2013 filed for amendment of the shipping bills.

3.The case of the petitioner is that the petitioner is a Government recognised Export house. In the course of their business, the petitioner had exported garments, vide various shipping bills filed with the Inland Container Depot, Tirupur. The officer concerned rejected the classification made by the petitioner and had sanctioned the drawback under a different serial number of the drawback schedule, which led to short payment of duty drawback. The petitioner is entitled for duty drawback for the goods exported in terms of Section 75 of Customs Act, 1962.

4.Learned counsel for the petitioner vide his letter dated 29.11.2013 sought a speaking order from the respondent, as the assessment were contrary to the claim of the petitioner. The respondent vide letter dated 17.02.2014 refused to pass speaking order by stating that no re-assessment was done and that the self assessment done by the petitioner was accepted. The counsel for the petitioner sent a reply dated 17.03.2014 justifying the claim of the petitioner and further stated that the classification was declared in the shipping bills only on the insistence of the Department and also asked for re-assessment of the shipping bills. The respondent vide letter dated 25.04.2015 rejected the request for amendment of shipping bills. Aggrieved by the said order, an appeal was preferred before the Commissioner Appeals, Coimbatore. The Superintendent (Appeals) informed the petitioner that the appeal is not maintainable as no speaking order is passed. The counsel for the petitioner vide his letter dated 30.06.2014 requested the respondent to pass a speaking order. The respondent vide letter dated 17.07.2014 requested the petitioner to send full facts supported by documentary evidence. The counsel for the petitioner vide letter dated 16.08.2014 sent the complete details along with the supporting documents justifying the request for amendment of shipping bills. The respondent sent a letter dated 28.08.2014, requesting to furnish all documentary evidence. The counsel for the petitioner sent a reply to the respondent stating that all the required information along with evidence were already submitted and requested for speaking order, if amendment is not permitted. Aggrieved over the same, the present writ petition is filed.

5.Learned Standing Counsel appearing for the respondent contended that the authority has taken note of Section 149 of the Customs Act, which is extracted below and informed the petitioner that it was not feasible.

> "149.Amendment of documents
>
> Save as otherwise provided in Sections 30 and 41, the proper officer may, in his discretion, authorise any document, after it has been presented in the customs house to be amended:
>
> Provided that no amendment of a bill of entry or a shipping bill or bill of export shall be so authorised to be amended after the imported goods have been cleared for home consumption or deposited in a warehouse or the export goods have been exported, except on the basis of documentary evidence which was in existence at the time the goods were cleared, deposited or exported, as the case may be."

He would further contend that as per Section 149 of Customs Act, 1962, amendment is barred by the proviso of the Section to already exported goods and documents filed with the department, reflected in ICES are not at all necessitating any such amendment.

6.Admittedly, opportunity was not given to the petitioner before passing such orders and there is no speaking order at all, it is only a correspondence between the parties. However, Section 149 of Customs Act is silent about the hearing the petitioner. The respondent ought not to have passed an order, without hearing the petitioner and he could have given an opportunity of hearing to the petitioner, before passing any order. Since communication dated 28.08.2014 asked the petitioner to furnish documents and also stated that the amendment is barred by the proviso to Section 149 of the Customs Act, which is extracted supra, the Appellate Authority has not passed any speaking order, though the petitioner approached the original authority for getting a speaking order and the documents referred to by the petitioner dated 05.06.2014, 25.04.2014 and 28.08.2014, cannot be treated as an order.

7.I find force in the contention of the petitioner to set aside the order on the ground that no opportunity has been given to the petitioner and there is no speaking order. The impugned order is set aside and the matter is remitted to the original authority. Accordingly, the writ petition is allowed with a direction that the petitioner shall appear before the authority concerned on 31.03.2015 and shall make his submissions/objections well before the date of personal hearing. Based on the objections, which are going to be submitted by the petitioner, the authorities may pass detailed orders, on merits and in accordance with law, not being influenced by this order. In case, the petitioner fails to avail the opportunity on 31.03.2015 for personal hearing for the reason whatsoever, the authority is empowered to pass fresh orders, on merits and in accordance with law. No costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

vga

To

The Assistant Commissioner of Customs,
ICD, SF.No.129, Poondi Ring Road,
Chettipalayam, Tirupur-641 652.

+1cc to Mr.T.Chandrasekaran, Advocate, S.R.No.12965

W.P. No.4953 of 2015

NM(CO)
CA(23/03/2015)