IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.09.2015

CORAM:

THE HONOURABLE MR. JUSTICE R. MAHADEVAN

W.P.No.16315 of 2006
and WP.M.P.No.244 of 2014

M/s.The Madras Aluminium Company Ltd.,
Rep. by its General Manager (Commercial),
Philips Parthasarathy,
Registered Office & Factory,
at Mettur Dam 636 402,
Tamil Nadu. ... Petitioner

-Versus-

The Commissioner of Customs (Export),
Custom House,
New No.60, Rajaji Salai,
Chennai 600 001. ...Respondent

Writ Petition filed under Article 226 of the Constitution of India for the relief of issuance of Writ of Certiorarified Mandamus calling for the records of the respondent comprised in order-in-original No.5372/2006 dated 21.04.2006.

For Petitioner(s) : Mr.Mohamed Shaffiq

For Respondent : Mr.V.Sundareswaran, Standing Counsel

ORDER

Challenging the order of the respondent dated 21.04.2006 finalizing the provisional assessment on the ground that the petitioner company availed Customs Duty Exemption on the basis of forged project implementing authority certificates and the consequential levy of penalty, the petitioner is now before this court with this writ petition.

2. The case of the petitioner in brief is that the petitioner company is a company registered under the Companies Act. The petitioner is exempted from customs duty. During the routine course of business, the petitioner company imported various goods according to their needs. While so alleging that the petitioner company availed customs duty exemption by producing forged project implementing authority certificates, a show cause notice came to be

issued on 21.04.2005 and was challenged by way of writ petitions. When the writ petition came to be dismissed on 02.08.2005, the petitioner company preferred writ appeal and the Division Bench by order dated 13.02.2006 disposed of the writ appeal with certain directions.

3. The petitioner further states that pursuant to the order of the Division Bench of this court, a notice came to be issued intimating the fact that personal hearing was fixed on 20.03.2006. On that day, a written submission had been made by the counsel for the petitioner and the counsel had sought time for submission of certain other documents and as such the case was adjourned to 12.04.2006. While so, the respondent passed the impugned order on 21.04.2006 without giving an opportunity of hearing and without following the directions of the Division Bench of this Court in W.A.Nos.1964 & 1965 of 2005 dated 13.02.2006. The grievance of the petitioner is that the impugned order has been passed in gross violation of principles of natural justice. It is the said order now under challenge in this writ petition.

4. Heard both sides and also perused the records carefully.

5. The Division Bench of this court, by order dated 13.02.2006, directed the authority to dispose of the matter after affording due opportunity of personal hearing and an outer time limit was also fixed to the effect that the entire proceedings should be over by eights weeks. Accordingly, an opportunity of personal hearing was afforded and the hearing was fixed on 20.03.2006. On that day, the petitioner was represented by a counsel and the case was adjourned to 12.04.2006.

6. The learned counsel for the petitioner specifically submitted before this court that for the hearing fixed on 12.04.2006 no intimation was given and no opportunity of hearing was afforded to the petitioner.

7. On the other hand, the learned standing counsel for the respondent would submit that, as a matter of fact, a notice was issued to the petitioner for personal hearing on 20.03.2006 and on that day a counsel represented on behalf of the petitioner and the case was adjourned to 12.04.2006. On 12.04.2006, neither the petitioner nor his counsel appeared before the authority and as such, as directed by the Division Bench of this court, on 21.04.2006, the impugned order came to be passed by the respondent.

8. Since the petitioner disputes the very service of notice with regard to hearing of the case as well as the failure on the part of the authority to afford an opportunity of personal hearing and the learned standing counsel appearing for the respondent, on the other hand pointed out the absence of the petitioner and his counsel on the date of hearing, this court is inclined to direct the petitioner to

file an appeal under Section 129(A)(1) of the Customs Act, 1962 before the authority namely, ***South Zonal Bench of the Customs,Excise and Service Tax Appellate Tribunal, Chennai** within a period of three weeks from the date of receipt of a copy of this order. It is open to the petitioner to raise all the grounds including violation of principles of natural justice. On such filing of appeal, the authority concerned shall take the appeal on file without any reference to the period of limitation and dispose of the same on merits and in accordance with law after giving due opportunity to the petitioner within a period of four weeks thereafter.

9. The writ petition is disposed of with the above directions. No costs. Consequently, connected MP is closed.

s/d-
Assistant Registrar(AS)
4.9.2015

*Corrected as per order of this Court
for being mentioned in W.P.No.16315/06 and
WPMP.No.244 of 14 dated 15.9.2015
Sd/-
Assistant Registrar
16.9.2015

True Copy

Sub-Assistant Registrar

Note:The Registry is directed
to return the original impugned
order to the petitioner company
to enable them to file appeal.

To
The Commissioner of Customs (Export), Custom House,
New No.60, Rajaji Salai, Chennai 600 001.

to be substituted
to the order
already
despatched on
4.9.2015

Copy to:
The Section Officer,
Current Section,
High Court, Madras.
(to return the original)

+ 1 cc to Mr.R.Karthikeyan, Advocate SR **50332**
+ 1 cc to Mr.V.Sundareswaran, Advocate SR **50759**

kgk(co)
prk4/9
pmk.16.9.2015