IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.10.2015

CORAM:

THE HONOURABLE MR. JUSTICE R. MAHADEVAN

W.P.No.34580 of 2002

M/s.Data Field India Limited,
Now known as
M/s.DATAFIELD India Private Limited,
Rep. by Managing Director,
No.119-1-B, Mudalipalayam Road,
Arasur Post, Coimbatore 641 407.
... Petitioner

-Versus-

The Deputy Commissioner of Customs (EOU),
Office of the Commissioner of Customs,
Customs House,
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 Certiorari calling for the records relating to the order in original No.1072/2002 Gr.1-100% EOU dated 27.06.2002 passed by the respondent and to quash the above said order as the same as illegal, arbitrary, without jurisdiction and contrary to the Board Circular No.60/99 dated 10.09.1999

For Petitioner : Mr.K.Jeyachandran
For Respondent : Mr.Rajinish Pathiyil, SCGSC

ORDER

Challenging the impugned order dated 27.06.2002 passed by the respondent imposing duty, the petitioner company have come forward with this writ petition.

2. The case of the petitioner in brief is as follows:- The petitioner company is a 100% Export Oriented Unit (EOU). The petitioner unit is controlled by the Customs and Central Excise Department. The petitioner is a manufacturer of telephone cords. In their routine course of business the petitioner exported goods to M/s.Gemini Industries Inc. USA. During the period

between March 1996 and June 1996, the petitioner exported telephone cords to the total quantity of 5,78,900, but, due to colour oozing out, the foreign buyer rejected 1,07661 pieces of telephone cords out of 5,78,900 pieces. Accordingly, the rejected goods were reimported to India under proper Customs Bill of Entry. According to the respondent, the petitioner company executed a bond for import of the said defective goods for repair and re-export as per the Noticiation 158/95 dated 14.11.1995. But, according to the petitioner, after the goods were imported, it was found that cleaning and repair of the defective goods were not feasible and therefore, the petitioner effected fresh supply of goods as replacement. The rejected materials were disposed in the presence of the authorities on payment of appropriate excise duty. While so, the respondent issued a demand notice dated 12.02.2000 for Rs.14,01,148/- alleging that the petitioner replaced the telephone cords instead of rectifying the defective materials and re-exporting the same. On receipt of the said notice, the petitioner approached the respondent along with a reply on 04.03.2000 seeking for personal hearing. The grievance of the petitioner company is that without hearing the petitioner, the respondent passed the impugned order determining the duty payable. It is the said order now under challenge.

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

4. Admittedly, the petitioner is an 100% Export Oriented Unit and it is controlled by the Customs and Central Excise Department. The petitioner exported huge quantity of telephone cords to a foreign country. But, the foreign buyer rejected certain amount of quantity on the ground that the colour was oozing out. On noticing such defects those defective items were reimported for repair and for re-export. But, after import, it was found that those rejected goods were beyond repair. In those circumstances, according to the petitioner, with the concurrence of the customs authorities those rejected goods were disposed of as is where is condition on payment of appropriate excise duty. But, a notice came to be issued by the customs authorities pointing out Notification No.158/95 that the petitioner failed to abide by the undertaking and re-export the imported goods and the action of replacement of goods by the petitioner company is against the statutory provision of the notification and the undertaking given by the petitioner.

5. The main ground of attack is that without affording an opportunity of personal hearing, the order in original came to be passed.

6. Since, no personal hearing was afforded to the

petitioner before passing the impugned order imposing duty and hence the petitioner is now before this court with this writ petition challenging the impugned order in original dated 27.06.2002.

7. The learned counsel for the petitioner would vehemently contend that even in the counter affidavit the respondent has pointed out with regard to some other transaction and the counter affidavit does not say anything with regard to the personal hearing afforded to the petitioner in respect of the consignment of export in question. On the other hand, the learned standing counsel for the respondent would fairly submit that no opportunity of personal hearing was afforded to the petitioner and that the impugned order came to be passed by the respondent only on the basis that the petitioner company accepted their liability for payment of duty in yet another case.

8. A perusal of paragraphs 7 & 8 of the counter affidavit would apparently go to show that no opportunity of personal hearing was afforded to the petitioner as provided under the Customs Act and unless and otherwise the petitioner is permitted to produce the documentary evidence so as to consider, there is no point for the authority to pass an order in original. Thus, this court is of the considered view that on the ground of violation of principles of natural justice the impugned order is liable to be set aside.

9. In the result, the impugned order is set aside and the matter is remitted back to the respondent for passing orders afresh after giving an opportunity of personal hearing to the petitioner. The petitioner shall appear before the respondent on any one of the working days within two weeks from the date of receipt of a copy of this order along with objections as well as the relevant documentary evidences including duty paid particulars in respect of the alleged disposal of imported defective goods. On such filing of documents and objections, the respondent shall pass appropriate orders afresh on merits and in accordance with law within a period of two weeks thereafter after. No costs.



-Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1.The Deputy Commissioner of Customs (EOU), Office of the Commissioner of Customs, Customs House, No.60, Rajaji Salai, Chennai 600 001.

+1 cc to Mr.K.Jayachandran Advocate sr.56915
+1 cc to Mr.Rajnish Pathiyil Advocate sr.56907

W.P.No.34580 of 2002

ctk(co)
aa26/11/2015