IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 02.06.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.11981 of 2016

& WMP No.10350 of 2016

1 M/s.IG International Pvt.Ltd.
Rep by its Director, Mr.Tarun Arora
Plot No. D263
802, 8th Floor
TTC, MIDC Area, Akshar Tower
Blue Chip Building Turbhe
Navi Mumbai 400 705 .. Petitioner

Vs.

1 Deputy Commissioner of Customs (Group 1)
Custom House
No. 60, Rajaji Salai
Chennai 1 .. Respondent

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Mandamus, directing the respondent to refrain from enhancing the value declared by the petitioner in respect of fresh appeals imported by the petitioner in the light of the decision of the Commissioner of Customs (Appeals) vide order-in-appeal No.C. Cus No.763/2014 dated 1.5.2014 and further direct the respondent to refund the differential duty illegally collected in respect of bills of entry Nos. 5464625 dated 12.5.2014, 5470598 dated 13.5.2014, 5470604 dated 13.5.2014, 5470596 dated 13.5.2014, 5494068 dated 15.5.2014, 5494070 dated 15.5.2014, 5540266 dated 19.5.2014, 4333689 dated 22.2.2016 and 4333741 dated 22.2.2016 along with interest at the rate of 18% per annum.

For Petitioner : Mr.Hari Radhakrishnan

For Respondents : Mrs.R.K.Shakina Reshma

O R D E R

Heard Mr.Hari Radhakrishnan, learned counsel appearing for the petitioner and Mrs.R.K.Shakina Reshma, accepting notice on behalf of respondents. With the consent of the learned counsel on either side, the Writ Petition is taken up for final disposal.

2.The petitioner who is a regular importer of Apples is aggrieved by the action of the respondent in enhancing the transaction value as and when the petitioner file a bill of entry for clearance of Apples for home consumption. The petitioner was faced with a similar situation when they imported Apples vide two Bill of entries dated 23.08.2013 & 26.08.2013. The transaction value was enhanced and an order to that effect was passed by the Assistant Commissioner of Customs (Gr.1) dated 05.02.2014. Aggrieved over the same, the petitioner preferred an appeal before the Commissioner (Appeals) in Bill No.763 of 2014. The Commissioner (Appeals) by a detailed order dated 01.05.2014, allowed the Appeal and held that the Assessing Officer has not adhered to any procedures or rules of valuation while enhancing the value of the goods,except to state that he has seen three bills of entries and the contents of which were not disclosed. Further, the Commissioner (Appeals), held that the Assessing Officer has not given any reason whatsoever in the entire Order-in-Original and has communicated that there is nothing speaking in the speaking order.

3.The learned counsel for the petitioner submits that the order passed by the Commissioner (Appeals) dated 1.5.2014 has become final. It is further submitted by the learned counsel that the petitioner has been regularly importing two consignments of Apples, every month and on each occasion, the petitioner has submitted representations requesting the first respondent to pass a speaking order. Copies of those representations have been filed in the typed set of papers pertaining to the bills of entries dated 12.5.2014, 13.5.2014, 15.5.2014 and 19.12.2014. However, till date the first respondent has not passed any speaking order, inspite of the statutory requirement under section 17(5) of the Customs Act, 1962, which mandatorily requires the authority to pass a speaking order, within a period of fifteen days. Unless and until the authority passes a speaking order, the petitioner would be unable to work out his remedies as provided under the Statute.

4.In the light of the above, there will be a direction to the first respondent to consider the petitioner's representation dated 06.06.2014, in respect of the various bills of entries and pass a speaking order, within a period of fifteen days from the date of receipt of a copy of this order. The first respondent shall afford an opportunity of personal hearing to the petitioner, before passing the order.

The Writ Petition is disposed of accordingly. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar(CSVI)

True Copy

Sub-Assistant Registrar

r p a
To
1 Deputy Commissioner of Customs (Group 1)
Custom House
No. 60, Rajaji Salai,
Chennai 1

+1 cc to M/s.R.K.Shakina Reshma Advocate sr.29354
+1 cc to M/s.Hari Radhakrishnan Advocate sr.29461

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