IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.06.2016

C O R A M

THE HON'BLE Mr.JUSTICE T.S.SIVAGNANAM

W.P.No.149 of 2015
and
M.P.No.1 of 2015

M/s.Welcome Fisheries Limited,
Rep. By Director K.Anandh
G.5, Amar Sindur,
No.43, Pantheon Road,
Egmore, Chennai - 600 008. ... Petitioner

Vs

1.The Commissioner of Customs (Appeals II)
Customs House, No.60 Rajaji Salai,
Chennai - 600 001.

2.The Commissioner of Customs (Export),
Customs House, No.60, Rajaji Salai,
Chennai - 600 001.

3.Deputy Commissioner of Customs (Refunds)
Customs House, No.60, Rajaji Salai,
Chennai - 600 001. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the records of the case relating to the impugned order in Appeal C.Cus.II No.71/2014, dated 31.10.2014, passed by the 1st respondent and to quash the same.

For petitioner ... Mr.T.Ramesh

For respondents ... Mr.K.Mohana Murali, S.P.C.

ORDER

Heard Mr.T.Ramesh, learned counsel for the petitioner and Mr.K.Mohana Murali, learned standing counsel appearing for the respondents.

2.The petitioner has filed this writ petition challenging an order passed by the Commissioner of Customs (Appeals) dated 31.10.2014 by which the order passed by the Deputy Commissioner of Customs granting refund of agricultural produces against the export of Prawns/Shrimp during 1998-2004 was set aside.

3.The learned counsel for the petitioner submitted that the impugned order calls for interference as appeal itself is not maintainable. To support his contention, the learned counsel referred to the Customs (Appeals) Rules, 1982 and by referring to Rule 4 therein, it is submitted that the form of application in Form No.C.A.-2 shall be filed in duplicate and shall be accompanied by two copies of the decision or order passed by the adjudicating authority (one of which at least shall be a certified appeal copy) and a copy of the order passed by the Commissioner of Customs directing such authority to apply to the Commissioner (Appeals). It is submitted that the appeal has been presented pursuant to an order of refund passed by the Commissioner of Customs (Exports), Chennai in Review Order No.26/ 2012 under Section 129D(2) of the Customs Act, 1962.

4.The petitioner's contention is that no original files were available, no original copy of the Order-in-Original was available and only unsigned photocopy was available and therefore, the Commissioner could not have exercised power under Section 129D(2) of the Act. In my view, the submission made by the petitioner is untenable for the simple reason that pursuant to the order passed by the Deputy Commissioner of Customs dated 21.07.2011, the petitioner has been sanctioned refund of Rs.1,77,75,784/- as refund of agricultural produces against export of prawns/shrimp paid during 1998-2004. Thus, there can be no due as to the extent of an order dated 21.07.2011, since the petitioner is a beneficiary of such an order. Therefore, the Commissioner, while exercising power under Section 129D(2) of the Act, could very well examine as to whether such order of refund was proper and the tenability of the order. It is not known as to why what circumstances the files were missing and it is not known as to whether the Commissioner of Customs has taken any administrative action with regard to the missing files. Be that as it may, the order of refund dated 21.07.2011 being not in dispute and the petitioner being a beneficiary of the said order, there is no error in the exercise of power made under Section 129D(2) of the Act. Therefore, the appeal before the Commissioner of Customs (Appeals) was maintainable. Hence, this Court is not inclined to interfere with the order at this juncture. However, it is open to the petitioner to work out the appellate remedy available to the petitioner, if they are so advised.

5.The Writ Petition is disposed of, with the above observation. If the petitioner chooses to exercise the option of filing an appeal by approaching the Tribunal, the Tribunal while computing limitation shall exclude the period from 05.01.2015 viz., the date on which the writ petition was filed till the date on which the certified copy of this order is received by the petitioner. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1.The Commissioner of Customs (Appeals II)
Customs House, No.60 Rajaji Salai,
Chennai - 600 001.

2.The Commissioner of Customs (Export),
Customs House, No.60, Rajaji Salai,
Chennai - 600 001.

3.Deputy Commissioner of Customs (Refunds)
Customs House, No.60, Rajaji Salai,
Chennai - 600 001.

+2cc to M/S.K.Mohanamurali, Advocate Sr.29907
+1cc to Mr.T.Ramesh, Advocate Sr.30022

W.P.No.149 of 2015

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srg 23/06/2016