IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.09.2016

CORAM

The Hon'ble Mr. Justice T.S.Sivagnanam

W.P.No.15374 of 2016
&
W.M.P.No.13398 of 2016

M/s.Monsoon Imports & Exports
Rep. by its partner, Shri M.Palaniappan,
New No.153, Old No.76, Doshi Plaza, 4th Floor,
Thambu Chetty Street,
Chennai-600 001. .. Petitioner

Vs.

1. Additional Director General,
Directorate of Revenue Intelligence,
No.27, Adarsh Towers,
G.N.Chetty Road, Chennai-600 017.

2. The Commissioner of Customs,
Chennai II Commissionerate,
Custom House, No.60,
Rajaji Salai,
Chennai-600 001. .. Respondents

Prayer:

This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari to call for the records pertaining to the impugned show cause notice dated 18.01.2016 in F.No.VIII/26/181/2013-DRI issued by the 1st respondent and quash the same.

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For Petitioner	:	Mr.Hari Radhakrishnan
For Respondent-1	:	Mr.V.Sundareswaran Senior Standing Counsel
For Respondent-2	:	Dr.S.Seethalakshmi Standing Counsel

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O R D E R

Heard Mr.Hari Radhakrishnan, learned counsel appearing for the petitioner, Mr.V.Sundareswaran, learned Senior Standing counsel appearing for first respondent and Dr.S.Seethalakshmi, learned Standing Counsel appearing for the second respondent. With the consent of the learned counsel on either side, the Writ Petition itself is taken up for final disposal.

2. The petitioner, in this Writ Petition, has challenged the show cause notice issued by the first respondent, dated 18.01.2016 under Section 28 & 124 of the Customs Act, 1962. The show cause notice proposes to hold that the Country of origin of the imported goods, namely, PVC Flex Banners, imported vide seven Bills of Entry, declared in the Bill of Entry as 'Malaysia' should be rejected, and the Country of origin of the goods should be held as 'China'. Secondly, the show cause notice proposes to levy anti-dumping duty on the goods, apart from redetermining the value of the goods, and proposing to confiscate the goods and levy penalty.

3. The learned counsel appearing for the petitioner submitted that, to establish the Country of origin of the goods, the petitioner has produced certain documents issued by the Malay Chamber of Commerce, Malaysia, stating that the aforesaid consignments are of Malaysian origin. A sample certificate has been annexed in page No.4 of the typed set of papers, filed in support of this Writ Petition. It is submitted by the learned counsel that similar certificates are available for other consignments as well. It is the further case of the petitioner that, this certificate issued by the Malay Chamber of Commerce, Malaysia, has been attested for their genuineness through the Malaysian Embassy in India. Therefore, it is submitted that, the Country of origin of the goods ought not to have been disbelieved, and there is no cause for issuing the show cause notice.

4. The other submission of the learned counsel is that, in the event, the Authority proposes to disbelieve the certificate produced by the importer for establishing the Country of Origin of the goods, there are certain other procedures, which are required to be followed before the certificate can be disbelieved or rejected. In this regard, the Operational Certification Procedure has been referred to, and it is submitted by the learned counsel that, there is an elaborate procedure prescribed under the guidelines, and this has not been adhered to, by the first respondent, while issuing the show cause notice.

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5. Therefore, it is submitted by the learned counsel that, unless, such procedure was followed, the question of issuing show cause notice would not arise. Thirdly, the learned counsel contended that, the reason for disbelieving the certificate issued by the Malay Chamber of Commerce, is by stating that, in respect of three containers out of seven containers, some containers have originated from China, and appears to have come to Malaysia and entered the Port at Chennai. Therefore, it is submitted that the first respondent has treated all the seven containers as having originated from China, solely for the reason that three of the containers had originated from the said Country (China). Nevertheless, the endeavor of the petitioner is to state that the goods are of Malaysian Origin, and there is absolutely no reason to disbelieve the certificates produced by the petitioner to certify Country of Origin, that too, when they have been issued by the competent Authority, viz., Malay Chamber of Commerce, Malaysia.

6. After elaborately hearing the learned counsel appearing for the parties, and perusing the materials placed on record, including the counter affidavit filed by the first respondent, this Court is of the view that all these issues raised by the petitioner are not exclusively legal issues, but mixed questions of fact and law. The question, as to whether the first respondent was justified in disbelieving, or ignoring the certificate issued by the Malay Chamber of Commerce, and if he had to disbelieve the same, whether the Operational Certification Procedure had to be adhered to, and whether the first respondent could have issued the show cause notice for all the seven containers, when even as per the averment made in the notice states that only three containers have originated from China, are all factual issues, which have to be agitated before the Authority. Neverthless, if the importer raises the issue relating to the genuineness of the certificate and the validity and its efficacy, by way of filing reply to the show cause notice, then, it goes without saying that the Adjudicating Authority should consider that issue as first issue, because, it has an effect on the entire adjudication. Assuming that the Authority is satisfied with the certificate produced by the petitioner, then the Authority need not proceed further with the other proposals in the show cause notice.

7. Similarly, the issue as to whether the Operational Certification Procedures require to be adhered to, could also be considered as an issue along with the first issue. However, for this reason, this Court is not inclined to quash the impugned show cause notice. All these issues, raised by the petitioner, can very well be agitated by way of reply to the show cause

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notice, and this Court will be inclined to direct the Adjudicating Authority to consider the issues raised by the petitioner. Though the plea of pre-meditated show cause notice was raised by the petitioner, in the affidavit filed in support of this Writ Petition, during the course of arguments, the learned counsel appearing for the petitioner has not pressed the same.

8. In the light of the above, this Court, while declining to quash the impugned show cause notice, is simultaneously granting liberty to the petitioner to file reply to the impugned show cause notice within a period of 30 days from the date of receipt of a copy of this order, in which, the petitioner can raise preliminary objections, i.e., with regard to the validity, and efficacy of the certificate issued by the Malay Chamber of Commerce and the effect of the Operational Certification Procedures etc., along with other factual contentions, and the second respondent, while adjudicating the issues raised by the petitioner, shall decide the issue relating to the validity and efficacy of the certificate issued by Malay Chamber of Commerce, as first among other issues to be decided. Needless to say that the opportunity of personal hearing shall be granted to the petitioner, and the petitioner is directed to cooperate in the adjudication process.

9 With the above observations and directions, the Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

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Sub Assistant Registrar

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To

1. The Additional Director General,
Directorate of Revenue Intelligence,
No.27, Adarsh Towers,
G.N.Chetty Road, Chennai-600 017.

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2. The Commissioner of Customs,
Chennai II Commissionerate,
Custom House, No.60,
Rsajaji Salai, Chennai-600 001.

+1cc to Mr.Hari Radhakrishnan, Advocate Sr.52471
+1cc to Dr.S.Suthalakshmi, Advocate sr.52903

W.P.No.15374 of 2016

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