IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 01.06.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.17628 to 17652 of 2016 and
connected M.Ps

W.P.No.17628 of 2016

M/s.Topsia Estates Pvt Ltd, Kolkata,
Rep by its uthorized Signatory
Shri R.Bharatkumar ... PETITIONER IN ALL WP PETITIONS

Vs

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

2 The Assistant Commissioner of Customs
Group-3, Custom House
No.60 Rajaji Salai, Chennai-600 001.
... RESPONDENTS IN ALL WP PETITIONS

Prayer: These Writ Petitions are filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified mandamus to call for the records of the first Respondent in Order In Appeal No.C.Cus.II. No.13/ to 27 2016 respectively (W.PS 17628 to 17642 of 2016) SC (us II No.239/16 to 248/16 dated 9/3/16 respectively (W.Ps.17643 to 17652/2016) dated 08.01.2016 and quash the same as the same is passed in total disregard to the provisions of the Customs Act, 1962 more particularly Section 17 of the Act ibid and direct the 1st Respondent to entertain the impugned Appeal on its merits without reference to limitation.

For Petitioner : Mr.B.Satish Sundar
For Respondents : Mr.T.Chandrasekaran
Senior Panel Counsel

C O M M O N O R D E R

Heard Mr.B.Satish Sundar, learned counsel appearing for the petitioners and Mr.T.Chandrasekaran, the learned Senior Panel Counsel, accepting notice for the respondents. With the consent of the learned counsel appearing on either side, the Writ Petitions are taken up for final disposal.

2.In all these Writ Petitions, the petitioner has challenged the orders passed by the Commissioner of Customs (Appeals-II), Chennai, dated 08.01.2016 and 09.03.2016.

3.Though the orders are individual orders in the Appeal Petitions filed by the petitioners against the assessment of their bills of entries, by the Assistant Commissioner of Customs comprising Group 7H and Group 3, the sum and substance of the grievance is that the petitioner's Appeal Petitions ought to have been allowed by following the earlier order passed by the Commissioner of Customs (Appeals-II) in Appeal Nos. 438 to 461 of 2015 dated 24.04.2015. By the said order, the Commissioner (Appeals-II), set aside the rejection of the declared value of the enhancement made by the assessing group and the assessing group was directed to again assess the bills of entries accepting the declared invoice value. The petitioners case is that the product which was the subject matter of consideration in the Appeals dated 24.04.2015, is one and the same as in the present bills of entries also.

4.As pointed out by the learned Senior Panel Counsel for the respondents, there are two sets of cases in this batch. In one set of cases, the Commissioner (Appeals-II) held that the Appeal Petitions were filed in time, but, since there Assessing Group is yet to pass a speaking order in terms of Section 17(5) of the Customs Act, 1962, direction was issued in that regard, leaving it open to the petitioner to approach the Commissioner (Appeals-II), if they are still aggrieved by the speaking order. The remaining set of Appeals were rejected as time barred.

5.After hearing the parties and perusing the materials placed on record, it has to be pointed out that there is no error in the impugned orders passed by the Commissioner (Appeals-II) in both the batches i.e. in the batch of cases where a direction was issued to the Assessing Group to pass a speaking order in terms of Section 17(5) of the Customs Act and rejecting the other Appeals, as time bared. However, the petitioner should not be left without any remedy, especially when in all these cases it is not in dispute that the Assessing Group has not passed a speaking order till date. In fact, in the earlier Petitions which were dismissed as time barred, the petitioner has clearly mentioned in paragraph No.4 of the Appeal Memorandum that the order under section 17(5) of the Customs Act is yet to be received by them.

6.Therefore, even if an order was passed, and if the petitioner was still aggrieved, they could have filed Appeal against the said order and obviously, the limitation will commence from the date on which the petitioner is communicated with the speaking order under section 17(5) of the Customs Act. Therefore, the rejection of the petitioner's Appeal, as being time barred, will not in any manner affect the petitioner's rights to seek for a speaking order to be passed by the Assessing Group under section 17(5) of the Customs Act. Since the Commissioner (Appeals-II) himself has directed to pass a speaking order in terms of section 17(5) of the Customs Act in so far as seven cases are concerned, this Court is of the view that for remaining cases also, the Assessing Group should pass a speaking order.

7.In the light of the above proceedings, the challenge to the impugned proceedings has become academic and there would be no necessity to interfere with the same. However, this Court is inclined to issue a direction to the Assessing Groups to pass a speaking order in all cases.

8.In the light of the above, the Writ Petitions are disposed of by directing the second respondent /Assistant Commissioner of Customs to pass a speaking order in term of Section 17(5) of the Customs Act, 1962, within a period of fifteen days from the date of receipt of a copy of this order, after affording an opportunity of personal hearing to the petitioner or their authorised representative. During the course of personal hearing it will be open to the petitioner to refer to the order passed by the Commissioner (Appeals-II) in Order in Appeal C.Cus.II Nos. 438 to 461 of 2015 dated 24.04.2015, which shall also be considered by the second respondent.

The Writ Petitions are disposed of on the above terms. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

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

2 The Assistant Commissioner of Customs
Group-3, Custom House
No.60 Rajaji Salai, Chennai-600 001.

+5cc to Mr.B.Sathish sundar, Advocate Sr.29140
+1cc to Mr.T.Chandrasekaran, Advocate Sr.29021

W.P.Nos. 17628 to 17652 of 2016

sks[co]
srg 04/07/2016