In the High Court of Judicature at Madras

Dated : 03.6.2016

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.18746 of 2016 & WMP.No.16364 of 2016

M/s.Topsia Estates Pvt. Ltd., rep.
by its Authorized Signatuory
Shri R.Bharatkumar ...Petitioner

Vs

1.The Commissioner of Customs
(Appeals-II), Chennai-1.

2.The Assistant Commissioner of
Customs, Group-3, Chennai-1. ...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the 1st respondent in Order in Appeal No.C.Cus.II.No.212/2016 dated 29.2.2016, 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 and direct the 1st respondent to entertain the impugned appeals on its merits without reference to limitation.

For Petitioner : Mr.B.Satish Sundar

For Respondents: Mr.T.Chandrasekaran

ORDER

Mr.T.Chandrasekaran, learned Standing Counsel takes notice for the respondents. Heard both. By consent, the writ petition itself is taken up for final disposal.

2. In this writ petition, the petitioner has challenged the order passed by the Commissioner of Customs (Appeals-II), Chennai dated 29.2.2016.

3. The impugned order is an order in the appeal petition filed by the petitioner against the assessment of their bill of

entry by the Assistant Commissioner of Customs, Group 3. The sum and substance of the grievance is that the petitioner's appeal petition 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 24.4.2015. 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 bill of entry accepting the declared invoice value. The petitioner's case is that the product, which was the subject matter of consideration in the order dated 24.4.2015, is one and the same as in the present bill of entry 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 the 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. This case falls under the second type.

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 order 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 this case, 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 an 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 was directed to pass a

speaking order in terms of Section 17(5) of the Customs Act in some cases, 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 Group to pass a speaking order in this case also.

8. Accordingly, the writ petition is 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 24.4.2015, which shall also be considered by the second respondent.

9. The writ petition is disposed of in the above terms. No costs. Consequently, the above WMP is closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

To
1.The Commissioner of Customs (Appeals-II), Chennai-1.
2.The Assistant Commissioner of Customs, Group-3, Chennai-1.

1 cc to Mr.T.Chandrasekaran, Advocate, sr.29694

RS

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kra 14.06.2016

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