IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:12.09.2016

C O R A M

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

W.P.No.29151 of 2015 &
M.P.Nos. 1 & 2 of 2015

M/s M.S. & Company
rep. By its Partner
Mr.K.C.Subhramaniyam [PETITIONER]

Vs

The Commissioner of Customs
O/o the Principal Commissioner of Customs
Chennai VII Commissionerate
New Customs House
Meenambakkam, Chennai 600 027. [RESPONDENT]

Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus call for the records pertaining to the impugned order-in-original No.381/2015-AIR dt 31.3.2015 passed by the respondent in F. No.CAU/DRI/(CH)/14/2013-AIR and quash the same further direct the respondent to pass fresh adjudication after giving a reasonable opportunity.

For petitioner ... Mr.Hari Radhakriahnan

For respondent ... Mr.A.P.Srinivas
Sr. Standing Counsel

O R D E R

Heard Mr.Hari Radhakriahnan, learned counsel for the petitioner and Mr.A.P.Srinivas, learned Senior Standing Counsel for the respondent and with their consent, the writ petition is taken up for final disposal.

2.The petitioner in this Writ Petition seeks for issuance of writ of certiorari to quash the order-in-original passed by the respondent dated 31.3.2015 and to direct the respondent to pass fresh adjudication order, after giving reasonable opportunity to the petitioner for being heard.

3.The undisputed facts are that the investigations conducted by DRI, Chennai, revealed that Shri Jatin Seth of M/s R.K.Enterprises, Tirupur, has imported 68 consignments of garment accessories from China and cleared through Sea and Airport by using the IECs and Import Certificates issued by the Apparel Export Promotion Council to various apparel exporters, Tirupur and availed duty exemption as per the condition 24 of the Customs Notification No.12/2012 dated 17.03.2012 and diverted the same to the local/ domestic market.

4.The allegation was that the certificates were arranged by Mr.N.Balaji, Propriertor of M/sJay Bee Logistics, Tirupur and out of 68 consignments imported in the name of M/s PGC Textile Corporation, was subsequently amended in the name of M/s Rajsujee International. There were totally 15 such importers. The Customs House Agents who have attended the Customs clearance have received the documents from Mr.Balaji of M/s Jay Bee Logistics and after clearance, the consignments were handed over to the nine transporters. Therefore, the investigations prima facie reveal that there was collusion, the exporters have availed duty exemption and cleared the goods and diverted the same into local market. The further allegation was that the actual invoice and packing list for the above consignments have been forwarded by the suppliers to Shri Jatin Seth, who in turn has forwarded the same to Mr.Balaji for preparation of fabricated invoice and packing list for customs purpose. Therefore, the declared value was rejected and show cause notice was issued to all the importers as well as the Custom House Agent.

5.The petitioner is the 46th Noticee in the show cause notice. The said Jatin Seth justified their action by contending that there was no bar for selling the imported goods to a trader and such trader in turn sold those goods to merchant exports. All of them were represented by Advocates and the proposal to impose penalty was also resisted. Ultimately, after adjudication of the show cause notice, the impugned order in original has been passed on 31.3.2015 and has been despatched to the address given to each of the parties also affixed in the Notice Board.

6.The contention of the learned counsel for the petitioner is that the petitioner have intimated the change of address to the respondent and without even issuing notice to them and affording an opportunity to submit their objections, the impugned order has been passed and it is in violation of principles of natural justice. It is submitted that the respondent before passing the order ought to have collected appropriate correct address of the petitioner, as the petitioner had given the change of address only to the CHA Unit, where the particulars regarding the Customs House Agents are maintained. In this regard, the learned counsel for the petitioner invited the attention of this Court to a letter dated 20.6.2013, sent by the petitioner to the Assistant Commissioner of Customs, C.H.A.Unit, Chennai, intimating their change of address. It is stated that the said communication was received by the Office of the Deputy Commissioner of Customs, CHA Unit on 27.6.2013, vide the date seal. Therefore, it is submitted that the impugned order is in violation of principles of natural justice.

7.In the considered view of this Court, the issues involved in the matter relate to disputed questions of fact and the issue to be first decided, is as to whether the conduct of the parties in availing exemption notification and diverting the goods to the local market was justified and whether they are legally entitled to do so. Not only the petitioner, but there were five other Customs House Agents who were also involved in the transaction. All the persons were issued notices and as mentioned above, there are totally 46 Noticees. Whether the notice was served on the correct address, whether the intimation given by the petitioner was taken on record, etc., are all disputed questions of fact. Therefore, those factual issues have to be necessarily agitated by the petitioner before the Appellate Tribunal, especially when all other Garment Exporters have filed Appeals as against the impugned order and the same are pending adjudication before the CESTAT.

8.Hence, on the above grounds, the Writ Petition is dismissed as not maintainable, leaving it open to the petitioner to file an appeal before the CESTAT, if so advised. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

The Commissioner of Customs
O/o the Principal Commissioner of Customs
Chennai VII Commissionerate
New Customs House
Meenambakkam, Chennai 600 027.

+1cc to Mr.Hari Radhakrishnan, Advocate Sr.51781
+1cc to Mr.A.P.Srinivas, Advocate Sr.51796

W.P.No.29151 of 2015

gj[co]
srg 05/10/2016