IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.6.2016

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.21753 of 2016
and
WMP.No.18605 of 2016

M/s.Kwality Impex, rep.by its
Proprietor Shri T.P.Ramesh ... Petitioner

Vs

The Commissioner of Customs,
Chennai II Commissionerate,
Custom House, Chennai-1. ... Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order-in-original No.45838/2016 dated 21.3.2016 issued in F.No.CAU/SIIB/08/2015, quash the same and further direct the respondent to permit cross-examination of the persons mentioned in the written submission dated 19.1.2016 filed before the respondent and also furnish the documents mentioned therein.

For Petitioner : Mr.Hari Radhakrishnan

For Respondent : Mr.A.P.Srinivas

ORDER

Mr.A.P.Srinivas, learned Standing takes notice for the respondent. Heard both. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner has filed this writ petition challenging the Order-in-Original passed by the respondent dated 21.3.2016. By the impugned order, the respondent has confirmed the proposal in the show cause notice dated 22.1.2015, thereby levying differential duty, interest and penalty.

3. The learned counsel for the petitioner has raised two contentions before this Court for invoking the extraordinary

jurisdiction under Article 226 of The Constitution of India. By referring to the written submissions made before the respondent dated 19.1.2016, it is submitted that the petitioner pleaded for supply of six documents, of which, the documents, which are vital for the petitioner to effectively participate in the adjudication proceedings are as follows:

> "(i) attested copy of the advance receipt dated 15.7.2011 from the foreign supplier retrieved from the hard disk under seizure
>
> (ii) copy of demand letter from the supplier, which was available in the laptop under seizure and
>
> (iii) retrieval of printouts from 'trash' and 'recycling bin' (icon wise) in my presence under mahazar proceedings on any day convenient to the officers from laptop under seizure."

4. It is further submitted that in spite of specific request to the Adjudicating Authority to supply these documents, the petitioner was not furnished with the same. It is also submitted that the petitioner wanted to cross examine the executives of the Customs House Agent, the witness, who was present during the seizure proceedings, the Tax Assistant, who had witnessed the retrieval proceedings under mahazar dated 28.1.2015 and the Investigation Officers. It is his further submission that without providing an opportunity to cross examine these persons, the Adjudicating Authority proceeded to pass the impugned order.

5. I have carefully considered the above submissions and perused the order passed by the respondent.

6. With regard to the documents, which have been sought for and the request made for cross examination, the Adjudicating Authority has dealt with the same in paragraphs 9.3 to 9.6 of the impugned order. From the said paragraphs, it is seen that during the course of personal hearing, the noticee was informed as to why the request for cross examination could not be considered. Further, with regard to the documents sought for, there is elaborate reasoning given by the respondent in the impugned order apart from stating that the retrieved printout of documents were handed over to the proprietor of the petitioner and his signature was obtained on such printouts.

7. It has been further recorded that the proprietor of the petitioner admitted in his statements that the printouts were retrieved from the laptop. In such circumstances, the question as to whether the reasoning assigned by the respondent as done

in the impugned order is correct or not, has to be necessarily adjudicated before the Appellate Tribunal. The grounds, which have been raised by the petitioner, are not grounds, on which, the petitioner should be permitted to bypass the appeal remedy provided under the statute.

8. The decisions relied upon by the learned counsel for the petitioner have all arisen out of the proceedings, which were dealt with in the manner provided under the statute i.e. those parties have exhausted the remedies available under the statute and ultimately, the orders passed by the Tribunal or the High Court were tested by the Hon'ble Supreme Court. Therefore, the at this juncture, the decisions, which were relied upon by the petitioner, cannot be directly made applicable to the instant case without going into the facts, which are not only complicated, but are seriously disputed.

9. With regard to the submission that all the transactions were done through the petitioner's bankers and there is no "hawala" in the same also cannot be considered at this stage of the matter in the light of the findings recorded by the respondent in paragraphs 9 to 9.3. Therefore, this Court is of the view that the writ petition cannot be entertained and the petitioner has to necessarily avail the appeal remedy provided under the statute.

10. In the light of the above discussion, the writ petition is held to be not maintainable and is accordingly dismissed. However, it is open to the petitioner to file an appeal before the Tribunal and if it is done, the Appellate Tribunal shall consider the appeal, uninfluenced by the observations made by this Court in this order, as the observations were made only for the purpose of holding that the writ petition is not maintainable and the petitioner has to exhaust the remedy available under the statute. No costs. Consequently, the above WMP is also dismissed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

The Commissioner of Customs,
Chennai II Commissionerate,
Custom House,
Chennai-1.

+1cc to Mr.Hari Radhakrishnan, Advocate, S.R.No.35590
+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.35703

WP.No.21753 of 2016
&
WMP.No.18605 of 2016

MP(CO)
CA(20/07/2016)