IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.8.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.27803 of 2016

M/s.Arpita Telecom & Computer
Services Pvt.Ltd., rep.by its
Director Ajeeth Kumar A.Warrier ...Petitioner

Vs.

1.The Commissioner of Customs
(Seaport-Import), Custom House,
No.60, Rajaji Salai, Chennai-1.

2.The Assistant Commissioner of
Customs (Group 5-B), Office of the
Commissioner of Customs, Custom House,
No.60, Rajaji Salai, Chennai-1.

3.The Assistant Commissioner of
Customs (Refund-Sea), Office of the
Commissioner of Customs, Custom House,
No.60, Rajaji Salai, Chennai-1.
...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Mandamus directing the second respondent to reassess Bill of Entry No.7618341 dated 8.12.2014 by granting exemption from payment of customs duty and other levies totaling to Rs.10,10,860/- by extending the benefit of Customs Notification No.39/96 dated 23.7.1996 as amended by Notification No.60/96 dated 22.8.1996 in terms of the Customs Duty Exemption Certificate dated 26.2.2015 for the supplies made to the Defence Establishments and consequently on such re-assessment, direct the 3rd respondent to grant refund.

For Petitioner : Mr.B.Satish Sundar
For Respondents : Mr.Rajkumar Jhabakh

ORDER

Mr.Rajkumar Jhabakh, learned Senior Panel Counsel accepts notice for the respondents. Heard both. By consent, the writ petition itself is taken up for final disposal.

2. The prayer sought for by the petitioner is to direct the first respondent to re-assess the bill of entry dated 8.12.2014 by granting exemption from payment of customs duty.

3. The petitioner imported certain goods for supply to the Indian Air Force. However, while clearing the goods, after filing of the bill of entry dated 8.12.2014, the petitioner paid duty on 9.12.2014 as assessed by the Department. Subsequently, the imported goods were installed in the establishments of the Indian Air Force in the following places :

| S.No. | Station Name | State |
|---|---|---|
| 1 | AFS Begumpet, Bowenpally P.O., Secunderabad-11. | Andhra Pradesh |
| 2 | ATS Belgaum, Karnataka - 591124 | Karnataka |
| 3 | Air Force Admin College, Red Fields, Coimbatore-641018 | Tamil Nadu |
| 4 | AFS Hakimpet, Secunderabad-24 | Andhra Pradesh |
| 5 | Air Force Academy, Dundigal, Hyderabad - 43 | Andhra Pradesh |
| 6 | AFS Jalahalli West, Bangalore-15 | Karnataka |
| 7 | AFS Tambaram, Chennai-46 | Tamil Nadu |
| 8 | AFS Yelahnaka, Bangalore-63 | Karnataka |
| 9 | ASTE, Yemlur Post, Bangalore-560037 | Karnataka |
| 10 | CHAFB, Agram Post, Bangalore-7 | Karnataka |
| 11 | College of Air Warfare, 2, Sardar Patel Road, Secunderabad-03 | Andhra Pradesh |
| 12 | IAM, Vimanapura Post, Bangalore-17 | Karnataka |
| 13 | Software Development Institute, Air Force Kempapura, Yemlur Post, Bangalore-37 | Karnataka |
| 14 | MTTI, Air Force Station, Avadi, Chennai | Tamil Nadu |

4. After installation, the Head Quarters Training Command, Indian Air Force, Bangalore, issued a customs duty exemption certificate dated 26.2.2015 certifying that the products were imported by the petitioner and installed in the various establishments of the Indian Air Force, as mentioned above, as against the supply order dated 6.8.2014 and that these items are covered under the exemption notification and are eligible for exemption from payment of customs duty. The certificate further states that the establishment is not engaged in any commercial activity. Based on such certificate, the petitioner filed a refund application before the third respondent on 11.1.2016.

5. While processing the application, the third respondent, by a communication dated 7.3.2016, issued a show cause notice calling upon the petitioner to state as to why the claim should not be rejected for non submission of the following documents :

> "(i). Reassessed copy of the Bill of Entry, in respect of which, refund has to be claimed.
>
> (ii) Import invoice along with Packing List for the Bill of Entry, for which, refund claim has been filed.
>
> (iii) Documents evidencing payment of duty (in original) in respect of the subject Bill of Entry.
>
> (iv) Certificate from the Chartered Accountant, whether the burden of excess duty paid has been passed on by the petitioner or not. If burden is not passed on, the certificate should explain how the burden of excess duty has not been passed on by the petitioner, to fulfil the requirement of unjust enrichment (in proper format)."

6. Learned counsel for the petitioner would submit that in respect of the defects mentioned in S.Nos.2, 3 and 4, the petitioner is ready and willing to produce the documents and in fact, has also produced the same before the Authority concerned. However, in respect of S.No.1, namely re-assessed copy of the Bill of Entry, since they had not applied for re-assessment, the petitioner requested the second respondent by a representation dated 6.5.2016, for re-assessed Bill of Entry by relying upon an exemption notification and taking note of the customs duty exemption certificate issued by the Defence Establishment. This representation is pending before the second respondent.

7. The learned Senior Panel Counsel for the respondents submits that he does not have instructions as to what orders have been passed on the representation filed by the petitioner dated 6.5.2016 before the second respondent.

8. In any event, the representation made by the petitioner being pending before the second respondent, it would be appropriate for the second respondent to consider the same in accordance with law. However, it is made clear that this Court has not issued any positive direction, but only directed the second respondent to consider the petitioner's representation on merits and in accordance with law.

9. In the light of the above, without going into the merits of the contentions of the petitioner, the writ petition is disposed of with a direction to the second respondent to consider the petitioner's representation dated 6.5.2015 on merits and pass appropriate orders on merits and in accordance with law, after affording an opportunity of personal hearing to enable the petitioner to produce the original documents and clarify any issues that may arise while considering their representation. No costs.

rs

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1.The Commissioner of Customs (Seaport-Import),
Custom House, No.60, Rajaji Salai, Chennai-1.

2.The Assistant Commissioner of Customs (Group 5-B),
Office of the Commissioner of Customs, Custom House,
No.60, Rajaji Salai, Chennai-1.

3.The Assistant Commissioner of Customs (Refund-Sea),
Office of the Commissioner of Customs, Custom House,
No.60, Rajaji Salai, Chennai-1.

+ 1 cc to Mr.B.Satish Sundar, Advocate Sr 45275
+ 1 cc to Mr.Rajkumar Jhabakh, Advocate Sr 45274

KR/6/9/16

WP.No.27803 of 2016