

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.06.2016

CORAM:

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

Writ Petition No.3876 of 2016
and W.M.P.Nos.3244 of 2016, 7998 of 2016
& 10257 of 2016

M/s. Krishna Tarpaulin Industries Pvt. Ltd.,
(Rep. By its Director, Smt. Mamta Bhandari),
Old No.43, New No.64, Sathana Naicken Street,
Choolai, Chennai - 600 112 ... Petitioner

Versus

The Commissioner of Customs,
Commissionerate II,
No.60 Rajaji Salai,
Chennai - 600 001 ... Respondent

Prayer:- Writ Petition filed under Article 226 of the
Constitution of India, seeking for a writ of mandamus, directing
the respondent to provide the documents / informations as
requested for by the petitioner, in their letters dated
13.06.2014 and 15.07.2014.

For Petitioner : Mr.J.Shankar Raman, for,
Mr. S.Venkatachalam
For Respondent : Mr. A.P.Srinivas

O R D E R

Heard Mr. J.Shankar Raman, learned counsel appearing for the
petitioner and Mr. A.P.Srinivas, learned Standing Counsel,
appearing for the respondent. By consent of the learned counsel
for both sides, the writ petition itself is taken up for final
disposal.

2. The petitioner has filed this writ petition praying for
the issuance of a writ of mandamus, to direct the respondent to
provide documents / informations, as requested for by the
petitioner, in their letters, dated 13.06.2014 and 15.07.2014.

3. The petitioner is one among the eighteen Noticees to whom
a show cause notice was issued on 06.01.2014, under Sections 28
and 124 of the Customs Act, 1962. There are various allegations
made in the show cause notice and for the purpose of disposal of
this writ petition, those facts may not be necessary and it

would suffice to state that the issue involves import of PVC Flex banners, which, according to the petitioner, was imported from Malaysia, but the Department proposed to reject the stand and state that the goods are of Chinese Origin. The petitioner, on receipt of the show cause notice, along with the annexures and documents, sent a representation dated 04.02.2014, wherein they sought for copies of certain documents, of which, only three would be relevant for the purpose of this case, as mentioned by the learned counsel for the petitioner, namely, copy of documents recovered from M/s. Jayam Impex, copy of documents recovered from M/s. Kamadaa Impex and copy of documents recovered from M/s MM Enterprises.

4. Pursuant to this representation, the DRI, by reply, dated 02.05.2014, stated that the relied upon documents, vide Annexures A-7 to A-9, have already been supplied along with the show cause notice. These three annexures are stated to have been relating to those three companies, whose names have been mentioned above.

5. On receipt of the reply, the petitioner addressed the respondent, by letter, dated 13.06.2014 stating that, what they have asked for are the copies of documents recovered from M/s. Jayam Impex, M/s. Kamadaa Impex and M/s MM Enterprises and what has been given to them was only mahazars. The petitioner was informed by the respondent / Department, by letter, dated 02.07.2014, that if at all they require any copies of unrelated documents, it is open to them to approach the DRI.

6. In the meantime, the petitioner sent a representation, on 15.07.2014, to the DRI. Since the petitioner did not submit their reply to the show cause notice, a notice of personal hearing was issued to the petitioner, dated 06.10.2015, fixing the personal hearing on 15.10.2015. On receipt of the same, once again the petitioner submitted another representation, requesting the copies of the documents and requesting permission to cross-examine the persons from whom documents have been recovered. In the meantime, there has been several other correspondences and the petitioner, on 21.12.2015, submitted their interim reply. Pursuant to which, the personal hearing was fixed on 11.01.2016 and at that stage, the petitioner rushed to this Court and filed this writ petition.

7. As noticed above, the petitioner is not the only Noticee in the show cause notice issued by the DRI, but there are 17 other persons along with the petitioner. The documents, which have been sought for by the petitioner, are said to have been recovered under Mahazars, A-7, A-8 and A-9. Therefore, it is the case of the petitioner that unless those documents are supplied, the petitioner would not be able to submit its reply.

8. It is not in dispute that those mahazars are drawn at the office premises of those three companies and not from the petitioner. In fact, those three companies and its Partners / Directors are also Noticees in the show cause notice. Therefore, during the course of adjudication, if the petitioner's contention is that, certain documents recovered from the office premises of those three companies are relevant, it would always be open to the petitioner to raise such a plea before the Adjudicating Officer and that cannot be a reason to submit a proper reply to the show cause notice and participate in the adjudicating proceedings. Therefore, at this stage, the petitioner cannot insist upon the documents, which they now seek for, which are admittedly not recovered from their business premises. Therefore, the prayer sought for by the petitioner cannot be granted.

9. Accordingly, this writ petition is dismissed. However, the petitioner is directed to submit their reply to the show cause notice, within a period of two weeks from the date of receipt of a copy of this order, after which the respondent shall fix the date of personal hearing and proceed to complete the adjudication, in accordance with law. No costs. Consequently, the connected WMPs are closed.

srk

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

1. The Commissioner of Customs,
Commissionerate II, सत्यमेव जयते
No.60 Rajaji Salai,
Chennai - 600 001

+ 1 cc to Mr.S.Venkatachalam, Advocate SR 36537

+ 1 cc to Mr.A.P.Srinivas, Advocate SR 36618

pa(co)
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