IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE:23.06.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.6548/2016 & WMP.No.5827/2016

M/s.Roots Multiclean Ltd.,
rep.by its Director K.Ravi
RKG Industrial Estate,
Ganapathy, Coimbatore 641 006. .. Petitioner

Vs.

1.The Joint Secretary to
Government of India,
Department of Revenue
[Revision Application Unit]
14, HUDCO Vishala Bldg,
B-Wing, 6th Floor, Bhikaji
Cama Place, New Delhi 110 006.

2.The Commissioner of Central
Excise [Appeals]
6/7, ATD Street, Race Course
Road, Coimbatore 641018.

3.The Assistant Commissioner
of Customs [Air Cargo]
Coimbatore Air Port,
Peelamedu, Coimbatore 641 014. .. Respondents

Prayer:Petition filed under Article 226 of the Constitution of India, seeking for a Writ of certiorari, calling for the records relating to the order No.12/2015-Cus. dated 17.06.2015 passed by the 1st respondent and quash the same as arbitrary, contrary to law and opposed to the settled law.

For Petitioner : Mr.K.Jayachandran
For Respondents : Mr.A.P.Srinivas, Standing Counsel

ORDER

Heard Mr.K.Jayachandran, learned counsel for the petitioner and Mr.A.P.Srinivas, learned Standing counsel appearing for the respondents and with their consent, the Writ Petition itself is taken up for final disposal.

2.The petitioner has filed this writ petition praying for issuance of a writ of certiorari to quash the order passed by the first respondent dated 17.06.2015 who has confirmed the order passed by the 2nd respondent, who in turn, confirmed the order passed by the 3rd respondent dated 25.02.2013. By the said order, the 3rd respondent demanded a sum of Rs.89,688/- paid by the exporter towards the Drawback amount along with appropriate interest and a penalty of Rs.500/- was imposed. In the order passed by the 3rd respondent, dated 25.02.2013, it was stated that the petitioner had exported goods and received a drawback amount to the tune of Rs.89,688/-. However, they have not submitted the Bank Realisation Certificate issued by the concerned Banks within the period allowed u/s.8 of the FEMA Act, read with Regulations, 2000 and Para 2.41 of the Export and Import Policy 2004-2009 and section 75 of the Customs Act, 1962 evidencing the realisation of sale proceeds in respect of the shipping bills under which the goods were exported. In the order dated 25.02.2013, it has been stated that a show cause notice was issued to the petitioner dated 08.01.2007 calling upon the petitioner to show cause as to why the drawback amount paid to them should not be recovered. The order proceeds to state that there was no response from the petitioner, personal hearing was offered and the personal hearing intimation was displayed in the Notice Board and there was no response. Therefore, the case was proceeded ex-parte. On appeal being filed before the 2nd respondent, the Appellate Authority also concurred with the 3rd respondent and the revision petition filed before the 1st respondent also met the same fate. The consistent case of the petitioner is that no show cause notice was received by them. Having failed before two authorities, when the revision petition was filed before the 1st respondent, the petitioner made an application under the Right to Information Act, 2005, on 24.02.2014 for which, the Information Officer of the respondent Department sent a reply dated 17.03.2014, from which it is seen that the Department did not have any records to show the manner in which the show cause notice was dispatched. That apart, there is no record available in the office of the 3rd respondent with regard to the service of intimation regarding personal hearing. If that be the case, then it goes to the root of the matter as decision has been taken against the petitioner without opportunity. This undoubtedly, is in violation of principles of natural justice.

3.The learned counsel for the petitioner submits that the amounts have been realised well within the cut-off time prescribed under the relevant Act and Rules and Regulations and these details are available with the petitioner and in fact, a Chartered Accountant Certificate was also produced by the petitioner. However, the Authority consistently rejected the case stating that the Bank Realisation Certificate has not been produced. The predicament which the petitioner has now been put to, is, on account of lapse of time, however if the Department has not been able to establish that show cause notice was issued to the petitioner, then obviously, the impugned orders have to be set aside as the petitioner has been penalised without opportunity.

4.The learned counsel for the petitioner referring to the decision of the revisional authority, in the case of In re Modern Process Printers, reported in 2006 [204] ELT 632 [G.O.I], wherein the revisional authority has considered as to how the incentive oriented beneficial schemes should be implemented and while sanctioning rebate as to how the procedural deviations can be condoned. As already pointed out, since there is no proof to show that the show cause notice was served on the petitioner, all the orders which have been passed by all the respondents against the petitioner required to be interfered with.

5.In the result, the writ petition is allowed and the impugned orders passed by the first respondent 17.06.2015 ; the order of the 2nd respondent / Appellate Authority dated 25.07.2013 and the order passed by the 3rd respondent dated 25.02.2013 are set aside and the matter is remanded back to the 3rd respondent for fresh consideration, who shall issue notice to the petitioner; call for the documents, call the petitioner for personal hearing during which the petitioner is entitled to place all documents to prove that the amounts have been realised within the time stipulated under the Statute and after taking into consideration the decision of the Central Government in the case of Modern Process Printers, pass fresh orders on merits and in accordance with law. the above direction shall be complied with by the 3rd respondent within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

sgl

To

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+1cc to Mr.K. Jayachandran, Advocate, S.R.No.35138
+1cc to Mr.A.P. Srinivas, Advocate, S.R.No.35169

NRJK(CO)
EU(12/07/2016)

W.P.No.6548 of 2016