BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 22.12.2016
CORAM :
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
W.P.(MD)No.24443 of 2016
and
W.M.P(MD)No.17638 of 2016

M/s.KARUR K.C.P. PACKKAGINGS LIMITED,
Rep., by its General Manager (Works),
Mr.T.MADHAIYAN,
S.F.No.199-201, Mayanur (Post) — 639 108,
Krishnarayapuram (Taluk), Karur District. ... Petitioner

vs.

1.The Commissioner of Customs, Central Excise & Service Tax (Appeals),
No.1, Williams Road, Cantonment,
Trichy — 620 001.

2.The Commissioner of Central Excise,
No.1, Williams Road, Cantonment,
Trichy — 620 001.

3.The Assistant Commissioner of Central Excise and Service Tax,
Karur Division, No.15, 3rd Floor,
Gowripuram Extension, Anna Nagar,
Karur — 639 002. ...Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Mandamus, directing the 3rd respondent herein to adjudicate and to pass final order/order in original pursuant to the show cause notice No.C.No.V/Ch.39/15/39/15/39/2014-C. ExAdjn., dated 16.12.2014 within a reasonable time as fixed by this Hon'ble Court.

For Petitioner : Mr.A.K.Jayaraj
For Respondents : Mr.S.Gurumurthy

ORDER

The prayer in this writ petition is for issuance of a Writ of Mandamus, directing the 3rd respondent herein to adjudicate and to pass final order/order in original pursuant to the show cause notice No.C.No.V/Ch.39/15/39/15/39/2014-C. ExAdjn., dated 16.12.2014 within a time frame to be fixed by this Court.

2.The petitioner/M/s.Karur K.C.P. Packkagings Limited, Mayanur, having Central Excise Registration No.AABCK 04638B XM 001, is engaged in the manufacture and export of HDPE / PP Bags, Flexible Intermediate Bulk Container (FIBC Bags) and other similar products. They classified FIBC (Flexible Intermediate Bulk

Container) under CETSH 6305 32 00 and that the said classification was also amended in RC under their application and they are Star Exports House, recognized by Government of India, Ministry of Commerce. The Excise Range Officer, Karur, vide letter dated 03.03.2010, asked the petitioner to re-classify the FIBC Bags under CETH 3923 29 90. The petitioner submitted their reply, contending that their product, FIBC Bags is classified under CETH 6305 32 00, all over India as well as Internationally, as goods of Textiles and hence, there is no need to re-classify the same.

3.The petitioner has further submitted that the Deputy Commissioner not satisfied with the classification of FIBC Bags under Chapter 63, had issued a show cause notice dated 25.03.2010, asking the petitioner as to why the product should not be re-classified under CETSH 3923 29 90 and the Registration Certificate should not be amended and all the goods exported under the classification of CETSH 6305 32 00 from 17.04.2009 to 15.03.2010 should not be taken as exported under CETSH 3923 29 90 and why penalty should not be imposed under Rule 27 of Central Excise Rules 2002. The petitioner submitted a reply, stating that the classification made by them is correct. Thereafter, the Assistant Commissioner of Central Excise, without taking note of any of the submissions made during the personal hearing given to the petitioner, had passed an order for re-classification of the goods manufactured by the petitioner under CETSH 3923 29 90 and also ordered that Registration Certificate shall be amended accordingly and that all the goods exported under classification CETSH 63 from 16.04.2009 to 15.03.2010, shall be re-classified under CETSH 39 and also imposed a penalty of Rs.5,000/-. Being aggrieved by the said order, the petitioner preferred an Appeal before the Commissioner of Customs & Central Excise (Appeals), Trichy and the appeal was ultimately allowed, confirming that the goods manufactured by the petitioner are to be classified under CETH 6305 32 00 only.

4.It is further contended that subsequently, the respondents issued a show cause notice to the petitioner on the same set of facts for the subsequent period viz., 01.06.2011 to 31.01.2012, 01.12.2012 to 31.12.2012 and 01.01.2013 to 30.11.2013 respectively, calling upon the petitioner to show cause as to why the product should not be re-classified under CETSH 3923 29 90 and the Registration Certificate amended accordingly and why the goods exported under the classification of CETSH 6305 32 00 from 01.01.2013 to 30.11.2013 should not be re-classified under CETSH 3923 29 90 and why penalty should not be imposed under Rule 27 of Central Excise Rules 2002. For the above said show cause notice, the petitioner submitted a reply on 11.02.2014, stating that the show cause notice is totally invalid and without jurisdiction, since there is no demand of any Central Excise Duty and further stated that the issue of classification of FIBC Bags is settled as CETH 6305 32 00, vide Order-in-Appeal No.200/2010, dated

15.11.2010 passed by the Commissioner of Customs & Central Excise (Appeals), Trichy, in the Appeal No.99/2010-TRY, against the Order-in-Original No.11/2010 (Central Excise), dated 13.08.2010 passed by the Assistant Commissioner of Central Excise, Karur, and requested to drop the show cause notice and further requested for a personal hearing.

5.It is also submitted that since no final order has been passed in the above show cause notices, where reply was also given for the earlier period, the petitioner filed W.P(MD) Nos.20125/2014, 20155/2014 and 20308/2014 and this Court vide orders dated 11.12.2014 and 12.12.2014, respectively, directed the authorities concerned to consider the explanation submitted by the petitioner and to pass final orders. Thereafter, the 3rd respondent vide five different orders Nos.03/2015-C.Ex., 04/2015-C.Ex., 05/2015-C.Ex., 06/2015-C.Ex., and 07/2015-C.Ex., had passed orders dropping the proceedings initiated under each show cause notices. As against the above five orders of the 3rd respondent, the department had preferred five Department Appeals before the Commissioner of Customs and Central Excise (Appeals-II), Trichy, and the same were dismissed and that it had become final. As against the earlier Commissioner of Customs (Appeals) order dated 15.11.2010, the Department had preferred an appeal before the CESTAT and vide order dated 03.08.2015, the appeal was dismissed.

6.While so, the 3rd respondent has issued the impugned show cause notice to the petitioner, on the same set of facts for the subsequent period namely, 01.12.2013 to 31.10.2014, calling upon the petitioner to show cause notice as to why the product should not be re-classified under CETSH 3923 2990 and Registration Certificate amended accordingly and why the goods exported under the Classification of CETSH 6305 3200 from 01.12.2013 to 31.10.2014 should not be re-classified under CETSH 3923 2990 and why penalty should not be imposed. The petitioner has given a detailed reply dated 13.06.2015 for the above said show cause notice, stating that the show cause notice issued is totally invalid and without jurisdiction and further stated that the issue of classification of FIBC Bags is settled as CETSH 6305 3200 by the earlier order of this Court and also by the order passed by the Ministry of Finance Circular and Ministry of Commerce Norms Committee and by earlier orders of Appellate Authorities and requested to drop the show cause notice and requested for a personal hearing. As no final orders are passed so far, this writ petition has been filed.

7.Having regard to the limited relief sought for, the 3rd respondent is directed to adjudicate and to pass final order/order in original pursuant to the show cause notice No.C.No.V/Ch.39/15/39/15/39/2014-C.ExAdjn., dated 16.12.2014, after affording opportunity of being heard to the petitioner, within a period of eight weeks preferably on or before the 1st of March 2017.

With the above direction, this Writ Petition stands disposed of. No costs. Consequently, W.M.P(MD)No.17638 of 2016 is closed.

Sd/-

Assistant Registrar(Writs)

/True Copy/

Sub Assistant Registrar

To

1.The Commissioner of Customs, Central Excise
& Service Tax (Appeals),
No.1, Williams Road, Cantonment,
Trichy – 620 001.

2.The Commissioner of Central Excise,
No.1, Williams Road, Cantonment,
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3.The Assistant Commissioner of Central Excise
and Service Tax,
Karur Division, No.15, 3rd Floor,
Gowripuram Extension, Anna Nagar,
Karur – 639 002.

+1cc to Mr.A.K.Jayaraj, Advocate, SR.No.83412
+1cc to Mr.S.Gurumurthy, Advocate, SR.No.83272

W.P.(MD)No.24443 of 2016
22.12.2016

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