

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.2.2017

C O R A M

THE HON'BLE MR.HULUVADI G. RAMESH, ACTING CHIEF JUSTICE
AND
THE HON'BLE Dr. JUSTICE ANITA SUMANTH

Writ Appeal Nos.130 and 131 of 2017
and
C.M.P.Nos.2232 to 2234 of 2017

M/s.Visal Lubetech Corporation,
rep. by its Proprietor R.Parivallal,
87/1, Helalige, Chandapura,
Hosur Main Road, Bangalore 560 081. Appellant in CMA 130/2017

P.Karthikeyan Appellant in CMA 131/2017

vs

The Additional Commissioner of Central Customs,
6/7, ATD Street, Race Course,
Coimbatore 641 018. Respondent in both CMA's

Prayer:- Writ Appeals filed under Clause 15 of the Letters
Patent against the order of this court dated 30.9.2016 in
W.P.Nos.33741 and 33742 of 2016.

W.P.No's. 33741 and 33742 of 2016:- Petitions filed under
Article 226 of the Constitution of India, praying this Hon'ble
Court to issue a Writ of Certiorarified Mandamus Calling for the
records pertaining to the impugned order-in-original
No.5/2016/ADC (Cus.) dated 29.04.2016 passed by the respondent
in C.No.VIII/10/19/ 2014-Cus-Adj and quash the same and further
direct the respondent to permit the petitioner to cross-examine
the chemical examiner of CRCL whose report has been relied upon.

For Appellants : Mr.Vijay Narayan, Senior Counsel for
Mr.G.Derrick Sam
For Respondent : Mr.A.P.Srinivas

COMMON JUDGMENT

(Judgment of the Court was delivered by Dr.Anita Sumanth, J.,)

Heard Mr.Vijay Narayan, learned Senior Counsel for the
appellants and Mr.A.P.Srinivas, learned Standing Counsel, who
takes notice for the respondent.

2. By order dated 29.1.2016, the respondent authority has rejected the prayer of the petitioner to cross-examine the Central Revenue Control Laboratory official on the aspect of nomenclature with regard to the raw material used in the manufacture of carbon black feedstock and it appears that the Additional Commissioner, having considered the request for cross examination, found that it is not necessary, by giving technical reasons. This order was not challenged, but, subsequently, at the time of final hearing, in para 42 of the impugned order, the claim of the petitioner has been rejected on the basis of the earlier order of the Additional Commissioner.

3. The learned Single Judge, in para 19 of the judgment, pointed out that the earlier order has not been challenged and accordingly, rightly the respondent-authority had rejected the prayer of the petitioner for cross-examination.

4. Learned counsel appearing for the respondent raised an objection to the effect that there is an alternative remedy available to the appellant.

5. Whenever there is violation of principles of natural justice, the remedy under Article 226 of the Constitution of India is not closed. In that view of the matter, even though the first order passed by the adjudicating authority has not been challenged, when the respondent authority has reiterated the same in the concluding part of the impugned order, it speaks to the fact that there is non-compliance of principles of natural justice and the petitioner has not been afforded opportunity to cross-examine to make his stand clear and to stand by his defence. Unless the same is brought on record by eliciting in cross examination, further argument, if any, raised, would be a futile exercise. In that view of the matter, modifying the order of the learned Single Judge as well as the order of the adjudicating authority rejecting the prayer of the petitioner for cross-examination, we allow the petitioner/appellant to cross examine the Central Revenue Control Laboratory official. Such exercise shall be done within two months and thereafter, after hearing the appellant, further orders may be passed in accordance with law.

6. The writ appeals are partly allowed. No costs. The connected miscellaneous petitions are closed.

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

ssk.

To

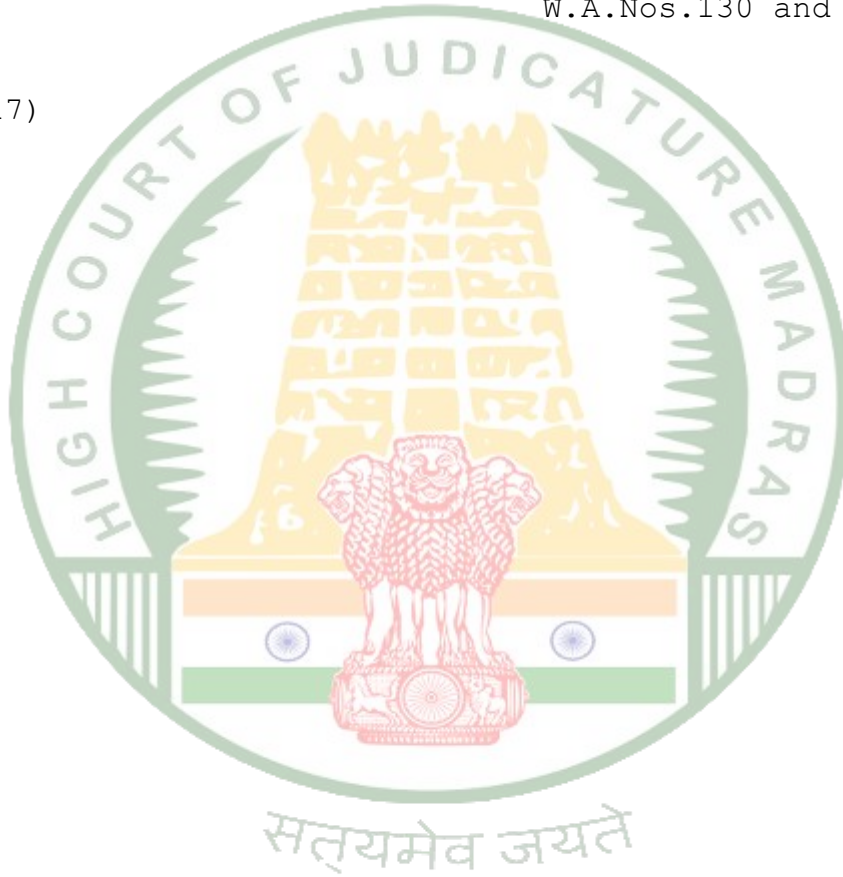
The Additional Commissioner of Central Customs,
6/7, ATD Street, Race Course,
Coimbatore 641 018.

+1cc to Mr.a.P. Srinivas, Advocate Sr. 10695

+1cc to Mr. Hari Radha Krishnan, Advocate Sr. 10549

W.A.Nos.130 and 131 of 2017

SV(CO)
VR(3/5/2017)



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