IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER

W.P.No.4760 of 2017

M/S.Dev Kiran Paper Mills Pvt. Ltd.
No.24, Gudimayu Village
Banglore-560 074. ... Petitioner

vs.

1.The Commissioner of Customs
Customs House No.60
Rajaji salai, Chennai-600 001.

2.The Appraiser
Office of the Commissioner of Customs
Customs House No.60
Rajaji salai, Chennai-600 001.

3.Assistant Commissioner of Customs
Customs House No.60
Rajaji salai, Chennai-600 001. ... Respondent

Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Mandamus, to direct the respondents to conduct final assessment and lift the alert in the EDI system in the petitioner's name for stopping any further business by the petitioner.

For Petitioner : Ms.Anita Thomas for
M/S.V.J.Mathew and Co.

For Respondents : Mr.K.Ravi
Standing counsel

ORDER

1. Issue notice. Mr.K.Ravi, accepts notice on behalf of the respondents.

1.1 With the consent of counsels for the parties, the writ petition is taken up for hearing and final disposal.

2.The substantive prayer made in the writ petition is as follows:

> ".. to issue a writ of mandamus or other appropriate writ, direction or order directing the respondents to conduct final assessment and lift the alert in the EDI system in the petitioner's name for stopping any further business by the petitioner."

3.As would be evident from the prayer extracted above, there are two limbs to the prayer made before this Court.

3.1 First, the respondents be directed to carry out a final assessment in the matter.

3.2 Second, the alert put out qua the petitioner via the EDI system should be lifted.

4.Insofar as the second limb of the prayer is concerned, counsel for the petitioner does not press the same, in view of the direction, that, I propose to pass with regard to the time frame, within, which, the assessment proceedings should be completed by the concerned respondents.

5. Briefly, the facts, in the background of which, the petitioner has approached this Court, are as follows:

(i) The petitioner appears to have imported a "Paper Machinery" under EPCG scheme.

(ii) Import of the Paper Machinery and other items was sourced from the sellers located in Netherlands based on Purchase Agreements, dated 02.10.2008 and 06.10.2008.

(iii) These purchase agreements were executed between the petitioner and Troostwijk Veilingen B.V., i.e., the aforementioned Dutch entity.

(iv) The petitioner concedes that the paper machinery was not erected, which propelled respondent No.3 to issue a notice dated, 26.07.2010.

(v) Via the said notice, the petitioner was directed to participate in the hearing, fixed in that behalf, and submit relevant documents to enable the said respondent to complete the provisional assessment in the matter.

(vi) The record shows that, correspondence has been exchanged between the petitioner and respondent No.3 with regard to the submission of the documents.

6.It is the petitioner's claim that, the installation certificate, dated 18.11.2010, issued by the Deputy Commissioner of Central Excise, was submitted to respondent No.3.

6.1 Furthermore, the petitioner claims that, the copies of the Purchase Agreement, TR6 challan (9 nos.), License copy, Bill of Entry, Purchase order, and invoices for the finalization of the assessment, as also for cancellation of the Bond, were submitted, on 14.02.2011.

6.2 It is averred by the petitioner that, in spite of submission of these documents, a show cause notice, dated 21.09.2011, was issued, whereupon, an affidavit, dated 07.10.2011, was submitted by the petitioner.

6.3 The petitioner's stand is that, via this affidavit, it was communicated to the concerned authority that the duplicate copies of the bill of entries, pertaining to the imports made, had been misplaced and/or were untraceable.

7. It appears that, thereafter, the petitioner was issued a notice dated 09.10.2015 by respondent No.2, directing the petitioner to produce the copies of the Agreement/Purchase Order, Proof Invoice, Installation Certificate, License copy, working sheet debiting total assessable value, details of duty foregone, as also quantity of import, and original duplicate copies of bills of entry etc.

8. As would be evident from the narration of facts set out above, it is the petitioner's case that most of the documents have already been furnished and that, the bill of entries, however, are untraceable.

8.1. It is, in this context, that the petitioner has sent a reply dated 16.10.2015 to respondent No.2.

9. Presently, though, as indicated at the outset, the petitioner is aggrieved by the fact that, the assessment has not taken place resulting in an alert being put out against him in the EDI system.

9.1. Given the circumstances, in my view, the prayer made by the petitioner for issuance of a direction that assessment proceedings be concluded, albeit, in accordance with law, appears to be reasonable.

10. Faced with this, counsel for the respondents says that, a direction be issued for conclusion of the assessment proceedings within the given time frame.

11. It is ordered accordingly. Respondent Nos.2 and 3 shall conclude the assessment proceedings as expeditiously as possible, after affording an opportunity of a personal hearing to the petitioner/authorised representative.

11.1 The respondent Nos.2 and/or 3, for this purpose, will issue a written notice to the petitioner setting out the date, time and venue of the hearing. The notice will also indicate the documents, if any, required to be produced by the petitioner. Respondent No.3 shall pass a speaking order; a copy of which, will be furnished to the petitioner.

12. Needless to say, the aforementioned exercise will be concluded at the earliest, though, not later than eight (8) weeks from the date of receipt of a copy of this order.

13.The writ petition is, accordingly, disposed of. There shall, however, be no order as to costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Commissioner of Customs
Customs House No.60
Rajaji salai, Chennai-600 001.

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Office of the Commissioner of Customs
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3.Assistant Commissioner of Customs
Customs House No.60
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+1 CC to M/S.V.J.Mathew and Co., Advocate Sr.No.11976

+1 CC to Mr.K.Ravi, Advocate Sr.No.11966

W.P.No.4760 of 2017

NR(CO)
KP(17.03.2017)