IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2017

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.7526 & 7527 of 2017
and
W.M.P.Nos.8213 & 8214 of 2017

1.M/s.Ruby Overseas
No.141 (Old No 68) Govindappa Naicken
Street Chennai 600 001
Rep. by its Partner
Shri.Ameen Khudus.

2.Shri Naushad Yunus
Partner M/s.Ruby Overseas No.141
Old No. 68) Govindappa Naicken Street
Chennai 600 001.
... Petitioners in both petition's

Vs

The Commissioner of Customs
Chennai II Commissionerate Custom House
No.60, Rajaji Salai
Chennai 600 001. ... Respondent in both petition's

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writs of Mandamus, directing the respondent to consider the petitioners interim reply dated 3.11.2016 and 07/12/2016 and to cause verification of the authenticity of Certificates of Origin furnished by them at the time of clearance of the goods impugned in the Show Cause Notice prior to passing any order of Adjudication.

For Petitioners: Mr.D.S.Krishnanandh

For Respondent : Mr.T.Pramodkumar Chopda
Senior Panel Counsel

O R D E R

Heard Dr.S.Krishnanandh, learned counsel for the petitioner and Mr.T.Pramodkumar Chopda, learned Senior Standing Counsel appearing for the respondents.

2.The petitioner is before this Court with the prayer i.e. to direct the respondent to consider the petitioner's interim reply dated 03.11.2016 to the show cause notice dated 26.08.2016 and to cause verification of the authenticity of certificates of origin furnished by them at the time of clearance of the goods impugned in the show cause notice, prior to passing any order of adjudication.

3.At the very outset, this Court would point out that this Court cannot direct the authority to decide in a particular manner nor set down a pattern in which the adjudicating authority should proceed with the decision making process. If there is an error in the decision making process or if the findings are so absurd and unsupported by the reasons or materials, the Court would step in and interfere with such order.

4.The petitioners' grievances appears to be that they had produced Certificates of Origin to show that the imported products are Bangladesh origin and without reference to such certificate, the respondent cannot proceed with to adjudicate the matter more particularly when the show cause notice dated 26.08.2016 largely relies upon statements of Shri Narendra Lodaya, President Director of M/s.PT Gajamukha, who is a person from Indonesia and certain e-mail correspondence from the said persons and other third parties. The petitioner states that has nothing to do with Shri Narendra Lodaya. The endeavour of the petitioner is to convince this Court to issue a positive direction to consider their interim reply by examining the authenticity or otherwise of the Certificate of Origin produced by the petitioner and then proceed to adjudicate the show cause notice.

5.I find that the show cause notice is in the process of adjudication and the request made by the petitioner for cross examination of Shri Narendra Lodaya and Sri.Tapan Paul has been accepted and the Appraiser, Commissioner Adjudication Unit Chennai-IV vide letter 11.09.2017 has informed the petitioner that the cross examination can be done on 12.10.2017 at 3.30 pm in the office of the respondent.

6.The learned counsel for the petitioner would submit that the petitioner will attend the hearing and avail the opportunity and cross examine those persons.

7.However one grievance expressed by the learned counsel for the petitioner is that the manner in which the communication sent by the Appraiser, Commissioner Adjudication Unit Chennai -IV dated 11.09.2017. It has been averred that this is with reference to paragraph 2 of the said letter. By reading paragraph 2, the learned counsel submits that the Appraiser himself has virtually finalized the issue and has come to a conclusion that by misrepresentation of facts before Bangladesh authorities fraudulently the certificate of origin has been obtained. Therefore, it is submitted that during the pendency of the writ petition the issue is sought to be adjudicated.

8.The learned Senior Standing Counsel for the respondent on the other hand has pointed out that paragraph No.2 of the letter dated 11.09.2017 of the Appraiser is in fact the extract of the allegation contained in the show cause notice dated 26.08.2016 and not his opinion or a conclusion in this regard.

9.The learned counsel invited the attention of this Court to paragraph nos. 8.4 and 8.5 of the show cause notice dated 26.08.2016.

10.On a reading of paragraph no.2 of the letter dated 11.09.2017 as well as paragraph nos. 8.4 and 8.5 of the show cause notice dated 26.08.2016, I find that they are the extract of allegations as contained in the show cause notice. However it is necessary to be stated that the paragraph has not been well worded in as much as it gives an impression that conclusion has been arrived at. The petitioner need not have any apprehension since the adjudicating authority will adjudicate the show cause notice regardless the averments made in letter dated 11.09.2017, based on the oral and documentary evidence that is placed before it. The petitioner further states that till date the certificate of origin produced by the petitioner has neither been impeached or discarded and therefore, without considering the validity of the certificate, the respondent should not proceed further to adjudicate the process.

11.I am not convinced to accede to the submissions. The allegation is that the certificate has been obtained by mis-representation of facts. This issue will be adjudicated by the authority viz., the respondent, after completion of the cross examination of the persons from whom the department has recorded statements under Section 108 of the Customs Act. Hence, for such purpose, the direction as sought by the petitioner cannot be granted and it is directed that the respondent shall adjudicate the cases based on the oral and documentary evidences that may be placed before it. The petitioner is granted liberty to file further objection /reply to the show cause notice dated 26.08.2016, in which they are permitted to place other factual averments if any and after receiving the additional reply/objections the respondent shall pass reasoned order in accordance with law.

12.The learned counsel for the petitioner has drawn the attention of this Court to the Customs Tariff [Determination of Origin of Goods under the Agreement on SAARC Preferential Trading Arrangement] Rules 1995" and particular by reference to Rule 8 (a) (b) which reads as follows:-

> "8. (a) In conformity with Article 15 of the SAPTA and national legislations, any Contracting State may prohibit importation of products containing any inputs originating from States with which it does not have economic and commercial relations.
>
> (b) Contracting States will do their best to cooperate in order to specify origin of inputs in the Certificate of Origin."

13.Referring to the above rule it is submitted that the contracting states, in the instant case Indonesia and Bangladesh, will do their best to co-operate in order to specify origin of inputs in the Certificate of Origin.

14.The respondent shall have to take note of the Customs Tariff Rules, 1995 and examine whether it is applicable to the facts and circumstances of the case.

15.In the light of the above reason, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

maya

To

The Commissioner of Customs
Chennai II Commissionerate Custom House
No.60, Rajaji Salai
Chennai 600 001.

+1cc to Mr.B.Sathish Sundar, Advocate, S.R.No.71678
+1cc to Mr.T.Pramod Kumar, Advocate, S.R.No.71742

W.P.Nos.7526 & 7527 of 2017

GN(06/11/2017)