IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.07.2017

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.9864 of 2017 &
W.M.P.No.10854 of 2017

Shri.N.Madhusudhana Rao,
Proprietor of
M/s.Sri Lakshmi Balaji Impex,
Door No.5/5/35, Flat No.97,
Maithiri Nagar,
Kukuatpally, Hyderabad - 500 072. ... Petitioner

Vs.

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

Prayer: Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus calling for the records pertaining to the impugned order-in-original No.53530/2017, dated 21.02.2017, passed by the respondent and quash the same as illegal and direct the respondent to permit cross-examination.

For Petitioner : Mr.Hari Radhakrishnan

For Respondent : Mr.T.Pramod Kumar Chopda
Senior Panel counsel

O R D E R

Heard Mr.Hari Radhakrishnan, learned counsel for the petitioner and Mr.T.Pramod Kumar Chopda, learned Senior Panel counsel for the respondent. With the consent on either side, the writ petition itself is taken up for disposal.

2. The petitioner is before this Court challenging the Order-in-Original passed by the respondent, dated 21.02.2017, on the only ground that his request for cross examination of certain persons was not considered and granted. The petitioner

is dealing with import on local sale of PVC cloth, PVC sheetings etc. The petitioner imported a consignment of PVC sheeting in Rolls (Flex Banner) from the overseas supplier and all payments are stated to have been made through proper banking channels.

3.The petitioner's case is that the goods have been imported from the suppliers at Malaysia and Thailand and pursuant to their importation, the goods were examined by the Duty Officers of Customs on filing the Bill of Entry and an out of charge order was passed by the Customs Authorities. Subsequently, on 05.07.2013, the officers of the Directorate of Revenue Intelligence, (DRI), Hyderabad, conducted search in the petitioner's office premises, but stated to have recovered nothing incriminating was recovered, but they had seized certain bills, CST returns, etc. The petitioner filed a Writ Petition in W.P.No.24277 of 2013, against the officers of the DRI, to forbear them from collecting any differential duty including anti-dumping duty, pertaining to the past imports of PVC sheeting in Rolls (Flex Banner). There was an interim order in the said Writ Petition granted on 30.08.2013. The DRI proceeded with the investigation and issued show cause notice dated 20.07.2016, calling upon the petitioner and 10 other notices to show cause as to why the anti dumping duty should not be demanded along with interest apart from the proposal to levy penalty etc. The petitioner submitted his reply on 20.12.2016.

4. The case of the petitioner is that in the show cause notice, the DRI primarily relies upon two statements/evidences to allege that the goods originated from China and not from Malaysia, they being statement, dated 25.07.2013, of one Mr.Manoj Arjun Gore; secondly bills of lading from China to Malaysia and from Malaysia to India. The case of the petitioner is that when the respondent granted an opportunity of personal hearing on 24.01.2017, the petitioner was represented by his counsel and a request was made for cross examination of the said Manoj Arjun Gore. However, the respondent rejected the request for cross examination vide letter dated 13.02.2017, and when the petitioner was in the process of filing a Writ Petition, the impugned order has been passed, which has been challenged in the Writ Petition.

5. The learned counsel for the petitioner submitted that the respondent ought to have rejected the request made for cross examination by passing a separate order, giving sufficient time to the petitioner to seek for appropriate legal remedy and then, should have given a rehearing and then commence the enquiry and not in the fashion done by the respondent. It is an admitted fact that the petitioner was represented by his counsel during the personal hearing and the respondent has clearly stated that the request for cross examination cannot be granted and

thereafter, proceeded further with the hearing and ultimately concluded the same and later passed the impugned order. Therefore, on the grounds raised by the petitioner, this Court is not inclined to entertain a Writ Petition and also in view of the fact that the petitioner alone is not a noticee, but he is one among the 10 noticees and incidentally the said Mr.Manoj Arjun Gore is also one of the noticees; and therefore, the petitioner has to necessarily invoke the alternate remedy available to them under the provisions of the Customs Act by preferring an appeal to the CESTAT.

6. It is made clear that the observations noted in this order are only for the limited purpose to show that the Court has considered the issue raised by the petitioner and examine the same only with regard to the maintainability of the Writ Petition and nothing more.

7. Accordingly, the Writ Petition is held to be not maintainable and the same is dismissed giving liberty to the petitioner to file an appeal before the Tribunal as against the impugned order. The Tribunal, while computing the limitation shall exclude the period during which this Writ Petition was pending i.e., from 17.04.2017, till the date of receipt of certified copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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

+ 1 cc to Mr. Hari Radhakrishnan, Advocate SR.57570
+ 1 cc to Mr.Pomod Kumar, Advocate SR.51551

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Eu 08/08/17