In the High Court of Judicature at Madras

Dated : 20.12.2017

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.33074 to 33078 of 2017
& WMP.Nos.36496 to 36500 of 2017

Anil Jain, Director, M/s.Sherisha Technologies Pvt. Ltd.	...Petitioner in WP.33074/2017
Mrs.Latha, Deputy General Manager, M/s.Sherisha Technologies Pvt. Ltd.	...Petitioner in WP.33075/2017
A.Ravi, Production-in-Charge, M/s.Refex Industries Ltd.	...Petitioner in WP.33076/2017
M/s.Refex Industries Ltd., rep.by Ms.R.Anitha, Assistant Manager-Accounts	...Petitioner in WP.33077/2017
M/s.Sherisha Technologies Pvt. Ltd., rep. by S.Sarath Kumar, Senior Executive-Accounts	...Petitioner in WP.33078/2017

Vs

1.The Chief Commissioner of Customs, Customs House, No.60, Rajaji Salai, Chennai-1.

2.The Commissioner of Customs (Chennai-II), Customs House, No.60, Rajaji Salai, Chennai-1. ...Respondents in all the WPs

PETITIONS under Article 226 of The Constitution of India praying for the issuance of a Writ of Declaration to declare that issuance of the second show cause notice in F.No.DRI/CZU/VIII/48/ENQ-01/ (INT-05)/2015 dated 23.1.2016 issued in pursuance of the Order-in-Original No.40007/2015 in F.No.CAU/DRI/CHE/19/2015 passed by the Commissioner of Customs (Chennai II) and the consequential passing of the Order-in-Original No.50231/ 2016 in F.No.CAU/DRI/CHE/32/2016 dated 23.9.2016 passed by the second respondent with reference to the petitioner companies are concerned as ultra vires and against the provisions of the Customs Act, 1962 and hence illegal, invalid and non est in the eyes of law.

For Petitioners : Mr.M.Venkatachalapathy, SC for Mr.Velayutham Pichaiya
For Respondents : Mr.V.Sundareswaran, SPC

COMMON ORDER

Mr.V.Sundareswaran, learned Senior Panel Counsel accepts notice for the respondents. Heard both.

2. In all these writ petitions, the petitioners have challenged the show cause notice dated 23.1.2016 issued not only to the petitioners, but to other co-noticees as well, by which, the second respondent proposed to seize R-22 Gas, which was illegally imported by mis-declaring the same as R-410a and also proposed to impose penalty apart from other proposals. The impugned show cause notice culminated in an Order-in-Original dated 23.9.2016.

3. As against the impugned order, the petitioners have an effective alternate remedy by way of an appeal before the Customs, Excise and Service Tax Appellate Tribunal. However, without resorting to filing of appeals, the petitioners are before this Court seeking to declare the show cause notice dated 23.1.2016 and the consequential Order-in-Original dated 23.9.2016 as ultra vires. Such a prayer cannot be entertained when the petitioners have an effective alternate remedy of appeal before the Customs Excise and Service Tax Appellate Tribunal.

4. For all the above reasons, the writ petitions are held to be not maintainable and accordingly, they are dismissed. No costs. Consequently, the connected WMPs are also dismissed.

5. However, the dismissal of these writ petitions will not prevent the petitioners from working out their remedies in accordance with law under the provisions of the Customs Act, 1962, if so advised.

20.12.2017

Speaking (or) Non Speaking Order
Index : Yes (or) No
Internet : Yes (or) No

To
1.The Chief Commissioner of Customs, Customs House, No.60, Rajaji Salai, Chennai-1.
2.The Commissioner of Customs (Chennai-II), Customs House, No.60, Rajaji Salai, Chennai-1.

RS

T.S.SIVAGNANAM,J

RS

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