IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :15.11.2017

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.17964 of 2009 and
M.P.No.1 of 2009

M/s.Vanick Oils and Fats Pvt. Ltd.,
415, The Commodity Exchange Building,
Plot No.2, 3 & 4, Sector - 19
Vashi, Navi Numbai - 400 076
Rep. By its Wholetime Director,
Shri R.P.Verma ... Petitioner

Vs.

1.The Deputy Commissioner of Customs
(Group 1 & 2) O/o. Commissioner of Customs,
(Seaport - Imports), No.60, Rajaji Salai,
Customs House, Chennai - 600 001.

2.The Asst. Commissioner of Customs (Refunds)
O/o. Commissioner of Customs
(Seaport - Imports), No.60, Rajaji Salai,
Customs House, Chennai - 600 001. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the respondents to amend the Bills of Entry No.428040, 428041, 428042 all dated 29.03.2007 and 430106 dated 03.04.2007 in terms of Section 149 r/w.154 of the Customs Act, 1962, by extending the benefit of notification No.2/2007 dated 05.01.2007, which is an unconditional one and consequently direct the respondent to refund the excess duty amount collected by way of such wrong assessment.

For Petitioner : Mr.B.Satish Sundar

For Respondent : Mr.A.P.Srinivas
Senior Panel Counsel

ORDER

Heard Mr.B.Satish Sundar, learned counsel for the petitioner and Mr.A.P.Srinivas, learned Senior Standing Counsel appearing for the respondents.

2.The petitioner seeks for an issuance of a writ of mandamus to direct the respondents to amend the Bills of Entry filed by them on 29.03.2007 and 03.04.2007 by exercising the powers under Section 149 r/w. 154 of the Customs Act, 1962 and extend the benefit of Notification No.2/2007 dated 05.01.2007.

3.The petitioner's case is that in terms of the said Notification No.2/2007, the actual duty payable on the imported goods viz., edible oil is NIL. On coming to know of the same, the petitioner had made a representation on 22.11.2008 requesting to extend the benefit of Notification No.2/2007 and if the same is done, the petitioner would be entitled to refund of the amount of Rs.6,34,708/-. This representation was sent through the counsel for the petitioner on 22.11.2008, which has been received in the office of the respondent on 01.12.2008, as could be seen from the postal acknowledgment card. In the representation, the petitioner referred to the decision in the case of M/s.Bhoppern Stop Limited V. The Assistant Commissioner of Customs, Group 3, Custom House, Chennai, in W.P.No.33620 of 2007 dated 19.11.2007 and other decisions. The said application is pending till date and no orders have been passed.

4.The learned Senior Standing Counsel appearing for the Revenue would contend that the petitioner had voluntarily paid the duty at the time when the Bills of Entry was assessed and if the petitioner is aggrieved by such assessment, he ought to have preferred an appeal against such assessment and in the absence of an appeal being preferred, the question of entertaining an application which is akin to an application for refund is not sustainable.

5.In my view, such a stand has not been taken by the respondents pursuant to the petitioner's representation dated 22.11.2008. In fitness of things, the respondent should pass a speaking order on the request made by the petitioner or else the petitioner would be left without a remedy. If the petitioner is not entitled for the relief sought for, the respondent should say so by passing a speaking order. On the other hand, if the respondents feel that the claim made by the petitioner is justified, then, consequence should follow. Therefore, there cannot be a stalemate in the matter and that appears so since 2008 and even before this Court from 2009 onwards, as no counter affidavit has been filed by the respondents.

6.Thus, in the light of the above factual scenario, this Court is inclined to issue appropriate directions to the respondents, however, not inclined to issue any positive direction at this juncture.

7.For the above reasons, the Writ Petition is disposed of, by directing the respondents to consider the petitioner's representation dated 22.11.2008 and pass a speaking order on merits and in accordance with law, after affording an opportunity of personal hearing to the authorised representative of the petitioner, within a period of eight weeks from the date of receipt of copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

Sgl
To

1.The Deputy Commissioner of Customs
(Group 1 & 2) O/o. Commissioner of Customs,
(Seaport - Imports), No.60, Rajaji Salai,
Customs House, Chennai - 600 001.

2.The Asst. Commissioner of Customs (Refunds)
O/o. Commissioner of Customs
(Seaport - Imports), No.60, Rajaji Salai,
Customs House, Chennai - 600 001.

+1cc to Mr.B.Sathish Sundar, Advocate SR.No.81190
+1cc to Mr.A.P.Srinivas, Advocate SR.No.81500

W.P.No.17964 of 2009

sm:6.12.2017