IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2017

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.Nos.16782 and 16783 of 2004

Roverco Apparel Co. (P) Limited
formerly known as Roverco Apparel Co. ... Petitioner
Alwarpet, Chennai-18. in both WPs

Vs

1.The Deputy Commissioner of Customs,
Group - 7, 'Custom House'
60, Rajaji Salai,
Chennai - 600 001.

2.The Customs, Excise and Service Tax Appellate Tribunal,
South Zonal Bench,
represented by its Assistant Registrar,
Shastri Bhavan, Annexe Building, 1st Floor,
No.26, Haddows Road,
Chennai - 600 006. ... Respondents
in both WPs

WP.No.16782 of 2004: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records on the files of the first respondent herein in order-in-original No.709/2002-GR.7 dated 30.4.2002 as affirmed by the second respondent herein in Appeal Order No.666/2003 dated 28.8.2003 and quash the orders of the first respondent herein in order-in-original No.709/2002-GR.7 dated 30.4.2002, while directing the first respondent herein to refund to the petitioner herein the sum of Rs.6,56,425/- remitted by them on 19.2.2004.

WP.No.16783 of 2004: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records on the files of the first respondent herein in order-in-original No.873/2002-Gr.7 dated 14.6.2002 as affirmed by the second respondent herein in Appeal Order No.665/2003 dated 28.8.2003 and quash the orders of the first respondent herein in order-in-original No.873/2002-Gr.7 dated 14.6.2002, while directing the first respondent herein to refund to the petitioner herein the sum of Rs.7,92,165/- remitted by them on 19.2.2004.

For Petitioner : Mr.K.A.Parthasarathy for Mr.N.Inbarajan

For Respondents : Mr.T.R.Senthilkumar, Senior Standing Counsel

COMMON ORDER

The petitioner has come up with these writ petitions, challenging the order-in-original passed by the first respondent - Original Authority, on 30.04.2002 and 14.06.2002 respectively, calling upon the petitioner to pay duty amount of Rs.3,42,142/- and Rs.4,12,186/- respectively, along with interest at 24% from the date of assessment of subject Bill of Entry, under the Customs Act, 1962, as confirmed by the second respondent - Tribunal. The petitioner has also sought for a direction to the first respondent to refund the sum of Rs.6,56,425/- and Rs.7,92,165/- respectively already remitted, to them.

2. The case of the petitioner is that they are recognised as an Export House by the Government of India since 23.09.1999. They are engaged in the business of exporting garments. While so, they have been issued with two show cause notices dated 6.12.2001 calling upon them to show evidence that they have fulfilled Export Obligation in terms of the conditions of the Bond executed by them and in terms of the Customs Notification No.30/97, under which, the imports were made by them, failing which, differential duty should be recovered from them, on the ground that the imports made against two licences dated 23.02.2000 and 28.01.2000, were allowed on condition that the importer shall produce evidence in respect of Export Obligation to be discharged within the expiry of Export Obligation period. As the petitioner has not replied to the said show cause notices nor appeared for the personal hearing, the first respondent -Original Authority passed two orders-in-original, confirming the differential duty demanded in the notices and directing them to pay the same immediately along with 24% interest. Challenging the same, the petitioner preferred two appeals after a delay of 220 days and 181 days respectively, before the Appellate Authority, Commissioner of Customs (Appeals), Chennai, who, by two orders-in-Appeal dated 31.03.2003, rejected the appeals as time barred, against which, the petitioner preferred further appeals before the second respondent - Appellate Tribunal. The Tribunal also dismissed the appeals and confirmed the orders passed by the authorities below. Aggrieved over the same, the petitioner is before this Court with the present two writ petitions.

3. Learned counsel for the petitioner submitted that only after passing the orders-in-original by the first respondent

-Original Authority on 30.04.2002 and 14.06.2002 in respective cases, the petitioner has received the redemption certificates from the Joint Director General of Foreign Trade, Ministry of Commerce, Chennai on 13.08.2002, as such, the petitioner was unable to produce the same before the Authority concerned within the time stipulated, in compliance with the export obligations. However, without considering the same, the Appellate Authority as well as the Appellate Tribunal, rejected the appeals filed by the petitioner as time barred and thereby, confirmed the orders-in-original passed by the first respondent, demanding differential duty imposed on the petitioner. Therefore, learned counsel sought for permission from this Court to submit the redemption certificates before the first respondent for reconsideration of the issue involved. Learned counsel also placed reliance on the decision reported in 2014 (309) E.L.T. 431 (Mad.) (Bharat Enterprises v. Commissioner of Customs (Seaport - Export), Chennai, wherein, this Court, in similar circumstances, allowed the writ petition and set aside the impugned orders.

4. Heard both sides and perused the materials placed before this Court.

5. Admittedly, the petitioner has not replied to the show cause notices issued to them. The redemption certificates, which are required to be submitted by the petitioner, to fulfil the export obligations, has been obtained by the petitioner, only after the first respondent - Original Authority passed the orders-in-original. In such circumstances, the petitioner filed appeals before the Appellate Authority to set aside the orders-in-Original passed by the first respondent. However, the Appellate Authority rejected the appeals as time barred, which was also confirmed by the Appellate Tribunal in the further appeals filed by the petitioner.

6. At this juncture, it is relevant to refer to the decision cited by the learned counsel for the petitioner, reported in 2014 (309) E.L.T. 431 (Mad.) (cited supra), wherein, it has been held as follows:

> "4.But, unfortunately, a show cause notice was issued within the period of eight years granted under the licence, calling upon the petitioner to show cause as to why duty should not be imposed. Unfortunately, the petitioner did not give a reply, leading to the Original Authority passing an Order-in-Original on 2.8.2010. The petitioner woke up to this order after a gap of about three years and attempted to file an appeal. Since, the Commissioner of Customs (Appeals), did not have the power to condone the delay, he rejected the appeal. The said order was confirmed by CESTAT on

18.9.2013. Thereafter, the petitioner has come up with the present writ petition challenging the Order-in-Original.

5.Technically, the petitioner could not have maintained the writ petition in view of the fact that he had exhausted all his statutory remedies and those orders passed by the Commissioner of Customs (Appeals) and CESTAT had already attained finality.

6.But, as I have stated earlier, this is a case where the very initiation of the proceedings, was completely arbitrary and faulty. The licence granted a time limit of eight years for the petitioner to fulfil the export obligations. Even before the expiry of the period of eight years, the Department issued a show cause notice in the year 2008 itself. Ultimately, what is to be seen in such cases is as to whether an exporter was within the boundaries of law and had fulfilled his obligations or not. If on facts the petitioner had fulfilled the export obligations as per the licence conditions, the technicality of the petitioner missing the bus at every time, should not be put against him, as substantial justice will fail in such cases."

7. Apart from that, the learned counsel for the petitioner, during the course of arguments, submitted that the petitioner may be permitted to produce the redemption certificates before the first respondent - Original Authority for reconsideration of the issue involved herein, for which, there is no objection raised on the side of the respondents.

8. For the reasons stated above, in order to provide an opportunity to the petitioner, this Court is inclined to set aside the orders impugned herein and remand the matters to the first respondent - Original Authority to redo the entire exercise.

9. Accordingly, the orders impugned herein are set aside and the matters are remanded to the first respondent - Original Authority for fresh consideration. The petitioner shall file their objections by way of reply as well as redemption certificates to the first respondent within a period of two weeks from the date of receipt of a copy of this order. On receipt of the same, the first respondent shall consider the same and pass orders, on merits and in accordance with law, within a period of six weeks thereafter.

10. Both the writ petitions are disposed of, as indicated above. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To
1.The Deputy Commissioner of Customs,
Group - 7, 'Custom House'
60, Rajaji Salai,
Chennai - 600 001.

2. The Assistant Registrar,
The Customs, Excise and Service Tax Appellate Tribunal,
South Zonal Bench, Shastri Bhavan,
Annexe Building, 1st Floor, No.26, Haddows Road,
Chennai - 600 006.

+1cc to Mr.TR.Senthil Kumar, Advocate, S.R.No.52261
+1cc to Mr.N.Inbarajan, Advocate, S.R.No.52238

WP.Nos.16782 and 16783 of 2004

GMI(CO)
GN(07/09/2017)