IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.07.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.38937 of 2003
and
W.M.P.No.47191 of 2003

M/s. Meenakshi Mission Hospital
and Research Centre,
Lake Area, Melur Road, Madurai - 625 107,
represented by its Director. ... Petitioner

Vs.

1. The Union of India,
Represented by the Secretary,
Department of Revenue,
North Block, New Delhi.

2. The Commissioner of Customs (SEA),
Air Cargo Complex,
No.33, Rajaji Salai,
Chennai - 600 001.

3. The Commissioner of Customs, (Air),
Air Cargo Complex,
Meenambakkam,
Chennai - 600 027.

4. The Assistant Commissioner of Customs (GR-5B)
Custom House,
Chennai-600 001. ... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the second respondent and quash the show cause notice under file No.S/23/180/90 Group V-B dated 09.03.2001.

For Petitioner : Mr.S.Dayaleeshwaran

For 1st Respondent : No Appearance

For Respondents : Mr.T.Pramodkumar Chopda
for R2 to R4

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O R D E R

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

2. The petitioner is a Hospital and a Research Centre and they are aggrieved by a show cause notice issued by the second respondent, viz., the Commissioner of Customs (SEA) dated 09.03.2001 under section 124 of the Customs Act, 1962. The primary ground, on which the impugned show cause notice has been challenged, is by contending that the very same Bill of Entry by which the petitioner imported certain medical equipment has been included in another show cause notice dated 03.05.2001 issued under section 124 of the Customs Act by the third respondent, viz., the Commissioner of Customs (Air).

3. In order to substantiate the said submission, the learned counsel for the petitioner has drawn the attention of this court to the Annexure-I of the show cause notice dated 03.05.2001 in Serial No.3, which relates to Bill of Entry No.16379 dated 19.04.1990, for the value of Rs.43,15,468/-. When this Court compared Annexure – I of the show cause notice dated 03.05.2001 to the paragraph No. 9(b) of the impugned show cause notice dated 09.03.2001, it is seen that it is the very same Bill of entry and the very same value of the imported goods, which are subject matter of the impugned show cause notice. Thus the said submission of the learned counsel for the petitioner is that there cannot be two show cause notices by two different authorities in respect of the same Bill of Entry.

4. The learned Senior Standing Counsel appearing for the respondent referred to the counter affidavit of the second respondent and submitted that though the imported goods cleared under Bill of Entry No.16379 dated 19.04.1990 was included in the show cause notice dated 03.05.2001, it appears it is due to oversight, since the Bill of Entry under debate falls under the jurisdiction of the Sea Commissionerate and further it is submitted that the inclusion of the said Bill of Entry in the show notice dated 03.05.2001 is a clerical error. Thus the second respondent has accepted the mistake that such Bill of Entry has been wrongly included in the show cause notice dated 03.05.2001. Sofar as the said show cause notice is concerned, the same was questioned by the petitioner by filing a writ petition in W.P.No.14055 of 2002. The said writ petition along with other connected matters were disposed of by a common order dated 19.12.2006. As against which the Revenue including the third respondent herein filed W.A.Nos.1378 to 1381 of 2007, which were disposed of by a common judgment dated 12.01.2010, issuing

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certain directions. At this stage, it would be useful to refer the judgment in its entirety and it is held as follows:

> "These writ appeals are filed against the common order made in W.P.Nos.14054 to 14057 of 2002 dated 19.12.2006.
>
> 2. The writ petitions are filed for the issuance of writ of mandamus for a direction to the 2nd respondent therein, viz., the Secretary, Ministry of Health, Union of India, New Delhi, to consider the application made by the petitioner therein, viz., M/s. Meenakshi Mission Hospital and Researh Centre represented by its Director, Madurai, under Notification No.208/81 and issue certificate as set out in Schedules B and C of Notification No.208/81 that the equipment imported by the petitioner therein is life saving equipment.
>
> 3. The learned single Judge, after hearing the learned counsel on either side, allowed the writ petitions, following the decision reported in Appolo Hospitals Enterprises Limited vs. Union of India ((2001) 133 ELT 58) and remanded the matter to the third respondent therein, viz., the Deputy Director General (Medical), Director General of Health Services, New Delhi, for fresh consideration in terms of the aforesaid judgment, against which, the present writ appeals have been filed.
>
> 4. Heard the learned Additional Central Government Standing Counsel appearing for the appellants and the learned counsel appearing for the respondent.
>
> 5. When the appeals came up for consideration, it is brought to the notice of the Court that in similar circumstances, this Court, by order dated 22.12.2008 in W.A.Nos.2179 to 2181 of 2002, disposed of the writ appeals with a direction to the appellants therein to dispose of the applications submitted by the Hospitals within a period of six weeks from the date of receipt of copy of that order or production of the same by the individual Hospitals.
>
> 6. Hence, following the same, the present writ appeals are also disposed of with a direction to the appellate herein to dispose of the application submitted by the respondent herein within a period of six weeks from the date of receipt of copy of this order or production of the same by the respondent Hospital. Connected M.Ps are closed. However, there will be no order as to costs.

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5. The learned counsel appearing for the petitioner would submit that pursuant to the directions issued by the Division Bench of this Court, till date, the appellants in W.A.Nos.1378 to 1381 of 2007 have not disposed of the application given by the petitioner Hospital, though a time limit has been fixed. Thus, whatever directions issued in the earlier writ appeals would equally apply to the present case also, since the only distinction between both the matters is one proceedings have been initiated by the Commissioner of Customs (Air) and the present proceeding is initiated by the Commissioner of Customs (Sea). Thus the writ petition is disposed of on the following directions:

(i) The Bill of Entry mentioned in Annexure-I in the show cause notice dated 03.05.2001, stands deleted and the said Bill of Entry shall be reckoned in the impugned show cause notice dated 09.03.2001.

(ii) The petitioner is directed to submit their objections to the impugned show cause notice, after they received the appropriate information from the appellants in W.A.Nos.1378 to 1381 of 2007, as ordered by the Division Bench in the judgment dated 12.01.2010.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

vsm

To

1. The Secretary to the Government,
   Union of India,
   Department of Revenue,
   North Block, New Delhi.

2. The Commissioner of Customs (SEA),
   Air Cargo Complex,
   No.33, Rajaji Salai,
   Chennai - 600 001.

3. The Commissioner of Customs, (Air),
   Air Cargo Complex,
   Meenambakkam, Chennai - 600 027.

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4. The Assistant Commissioner of Customs (GR-5B)
   Custom House,
   Chennai-600 001.

+1cc to Mr.T.Pramod Kumar Chopda, Standing Counsel, S.R.No.51552

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and
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CA(11/08/2017)

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