IN THE HIGH COURT OF JUDICATURDE AT MADRAS

Dated: 26.09.2018

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The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

W.A.No.944 of 2015
and
M.P.No.1 of 2015

Cooper Bussmann India Private Ltd.,
rep.by its Manager-Finance Mr.A.Devaraj
..Appellant/Petitioner

vs.

1.Assistant Commissioner of Customs (Group 7A),
Customs House,
60, Rajaji Salai,
Chennai-600 001.

2.The Superintendent of Central Excise,
Range E, Pondicherry II Division,
No.1, 3rd Cross Street,
Brindavan,
Pondicherry-605 013 ...Respondents/Respondents

Writ Appeal filed under Clause 15 of Letters Patent against the order dated 04.03.2015 made in W.P.No.3163 of 2015. This writ petition is filed under Article 226 of the constitution of India, for the issuance of a writ of certiorarified Mandamus calling for the records in F.No.S.Misc/ 118/2012-Gr 7A dated 13.1.2015 passed by the 1st respondent and quash the same as arbitrary and illegal and direct the 1st respondent to remove the alert created in the system.

For Appellant : Mr.Joseph Prabakar

For respondents : Mr.T.Pramod Kumar Chopda,
Standing Panel Counsel

JUDGMENT

(Judgment of the Court was delivered by T.S.SIVAGNANAM,J.)

This appeal by the assessee is directed against the order passed in W.P.No.3163 of 2015, dated 04.03.2015. The appellant filed the said writ petition praying for issuance of a Writ of Certiorarified Mandamus to quash the proceedings of the first respondent, dated 13.01.2015, in and by which, the appellant/petitioner was informed that 'alert' has been issued in respect of the appellant/petitioner since 'Jobbing Bonds' are pending for cancellation, vide file No.S.Misc.118/2012-Gr.7A and the appellant has been asked to submit documents, such as Bill of Entry, Shipping Bill, Export Invoice, End-use Certificate, BRC, ARE etc.

2.The appellant company is engaged in the manufacture of high rapturing capacity fuses and fuse components in their unit situated at Pondicherry. They had imported goods under Customs Notification 32/97, dated 01.04.1997, which provides for exemption from customs duty for goods imported to India for the purpose of carrying out job work in India and for export of the job worked (finished) product, subject to certain conditions mentioned therein. The appellant claimed exemption for the period 2000 to 2004, by making an application to the second respondent, along with the required documents, apart from executing a bond with the Excise Department, Pondicherry.

3.The appellant's case is that the application for exemption was accepted, as the appellant had exported the finished goods under the cover of export invoice by providing the details of export to the second respondent along with the corresponding details of input materials originally imported duty-free, which were utilised towards export consignment, giving cross-reference to bills of entries, under which goods were originally imported. The appellant is stated to have submitted the consumption details of the raw materials and components imported under various bills of entry and obtained end use certificate, thereby proving that the imported goods were in fact used for the intended purpose of job work in India and exported. Nevertheless, the 'alert' was issued, which prompted the appellant to approach the Department.

4.According to the appellant, on furnishing end use certificate, the 'alert' was removed by an order dated 22.10.2013. But, once again in the year 2015, a letter was sent to the appellant to produce the documents, for which, a detailed reply was sent by the appellant on 10.1.2015. Since the

Department was insisting upon production of documents, the appellant approached this Court and filed the writ petition for the afore mentioned relief.

5.The Writ Court, after hearing the learned counsel for the appellant as well as the Department, allowed the Writ Petition vide impugned order, with a direction to lift the 'alert' in respect of the appellant for a period of one month from the date of receipt of copy of the order and in the meanwhile, directed the appellant to produce the relevant documents before the authorities and establish its claim for removal of 'alert'. The appellant is before us challenging the finding rendered by the Writ Court in so far as the learned single Judge directed lifting of alert only for one month and further directed to produce the relevant documents.

6.The Revenue has field the counter reiterating the stand taken in the letter and would submit that though the appellant has obtained the end use certificate, the details of shipping bills, which were used for the purpose of export of resultant product, have not been produced and without the details of the Shipping Bills or bank realization certificate, it is not possible to verify the appellant's contentions, since for the purpose of export, the export bill or the shipping bills are the only documentary proof that export has been taken place or not. Further it is submitted that it is not clear as to whether the appellant has exported the finished goods or not, as per the Notification granting exemption for import. On the above grounds, the Department seeks to justify the 'alert', which was placed against the appellant in February 2013.

7.The Writ Court, while allowing the Writ Petition, took note of the fact that the appellant has been compelled to produce certain documents which are more than 10 years old and also took note of the difficulty expressed by the appellant and therefore, observed that it would be reasonable to set aside the impugned order in the writ petition. Nevertheless, the Writ Court granted only partial relief to the appellant by directing 'lifting of the alert' only for one month. In our considered view, if in the opinion of the Department, the documents produced by the appellant are insufficient to confirm as to whether the appellant has completed the export or not, it is well open to the Department to proceed in accordance with the provisions of the relevant statute, viz., the Customs Act, by initiating proceedings commencing with the issuance of show cause notice. Therefore, we find there is no justifiable reason for the Department to keep the 'alert' pending and parallelly send letters to the appellant to produce documents, which, according to the appellant, were produced in the year 2013 and at this juncture, after more than 5 years, they cannot be compelled to produce those documents.

8.Admittedly, the documents are all departmental records and if they are not verifiable documents, it is well open to the Department to draw an adverse inference and not to drag on the appellant, by writing letters to the appellant. Therefore, we are of the view that the Writ Court ought to have granted full relief to the appellant by allowing Writ Petition in its entirety and simultaneously leaving it open to the Department to proceed in accordance with law, if they so advised.

9.With the above observations, the Writ Appeal is allowed. The conditional order passed by the Writ Court is set aside and the Writ Petition is allowed as prayed for and the Respondents are directed to remove the 'alert' created in their system within 10 days from the date of receipt of copy of this judgment and as observed earlier, it is open to the Department to proceed in accordance with law, if so advised. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

msk

To

1.Assistant Commissioner of Customs (Group 7A),
Customs House,
60, Rajaji Salai,
Chennai-600 001.

2.The Superintendent of Central Excise,
Range E, Pondicherry II Division,
No.1, 3rd Cross Street,
Brindavan,
Pondicherry-605 013.

+ 1 cc to MR. T. Pramod Kumar Chopda, Advocate SR.66530
+ 1 cc to Mr.Joseph Prabakar, Advocate Sr.67137

W.A.No.944 of 2015

SR(CO)
EU(25/10/2018)