

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.3885 of 2018
and W.M.P.No.4760 of 2018

PNP Polytex Private Limited,
A/601-607, Mangal Aarambh,
Kora Kendra, Borivali (W),
Mumbai-400 092. ... Petitioner
Vs.

- 1.Assistant Commissioner of
Customs (Refunds),
Custom House, No.60, Rajaji Salai,
Chennai-600 001.
- 2.The Union of India,
Department of Revenue,
Ministry of Finance,
North Block, New Delhi-110 001. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the Order-in-Original No.27562/14 dated 09.07.2014 passed by the first respondent and quash the same and direct the first respondent to decide the matter after granting personal hearing.

For Petitioner : Ms.M.Swarupa
for Mr.Lakshmi Kumaran
For Respondents : Mr.A.P.Srinivas,
Senior Standing Counsel

O R D E R

Heard M/s.M.Swarupa, learned counsel for Mr.Lakshmi Kumaran, learned counsel for the petitioner and Mr.A.P.Srinivas, learned Senior Standing Counsel for the respondents. With consent on either side, this writ petition is taken up for final disposal.

2. The petitioner has impugned an Order-in-Original dated 09.07.2014, despatched on 08.08.2014, rejecting the application filed by the petitioner for grant of refund of 4% special

additional duty paid for import of PVC coated cloth for imports effected during 2001. First of all, the petitioner has to convince this Court as to why they have not challenged the impugned Order-in-Original at an appropriate time before the appropriate forum.

3. The learned counsel for the petitioner submitted that the impugned order was not communicated to the correct address of the petitioner and only from the communication dated Nil January 2017 in F.No.S.R No.2-REFUNDS, the petitioner came to know that the application for refund has been rejected. The petitioner's case is that the impugned Order-in-Original was not communicated to the correct address.

4. To ascertain the correctness of the said submission, this Court referred to the documents annexed in the typed set of papers, and found that the refund application was filed with the present address and not with the old address to which the impugned Order-in-Original was communicated. Therefore, the contention raised by the learned counsel for the petitioner that the impugned order sent to the wrong address merits acceptance.

5. Having been satisfied that the petitioner was not intimated about the rejection of the application for refund, the next aspect to be seen is as to whether the first respondent was justified in rejecting the application for the reasons assigned in the impugned order. The only reason for rejection of the refund application is on the ground of nonfulfillment of condition 2(b) of Notification No.102/2007-Cus, dated 14.09.2007, which states that the importer, while issuing the invoice for sale of the said goods shall specifically indicate in the invoice that in respect of the goods covered therein, no credit of additional duty of customs levied under sub-Section (5) of Section 3 of the Customs Tariff Act, 1975 shall be admissible. The first respondent appears to have perused the invoice, which was filed along with the refund claim and would state that the mandatory stamping has not been made, and therefore, the application for refund cannot be entertained.

6. Firstly, the proceedings were communicated to the incorrect address. The petitioner had no notice of the proceedings. Apart from that, before rejecting the petitioner's claim, it appears that no notice of hearing was issued to the petitioner. Though the statute does not mandate an opportunity of personal hearing, as the impugned order rejecting the petitioner's claim results in civil consequences, principles of natural justice have to be read into the provisions and the

petitioner should have been afforded an opportunity, as the impugned order is an order of adjudication. Therefore, on the said ground, the impugned order calls for interference. Apart from that, it has to be seen as to whether mere noncompliance of a condition affixing rubber-stamp seal on the invoice would defeat the very refund claim. This issue was considered by the Large Bench of the CESTAT in the case of Chowgule & Company Pvt. Ltd., vs. Commissioner of Customs & C. Ex. Reported in 2014 (306) E.L.T. 326 (Tri. - LB) and the Tribunal considered somewhat similar case as that of the petitioner pertaining to a commercial invoice and not a tax invoice, and it was pointed out as follows.

'5.2For taking the credit, the quantum of duty paid should be shown in the invoices and the same should be shown separately for each type of duties. In respect of a commercial invoice, which shows no details of the duty paid, the question of taking of any credit would not arise at all. Therefore, non-declaration of the duty in the invoice issued itself is an affirmation that no credit would be available. Therefore, non-declaration/non-specification of the duty element as to its nature and quantum in the invoice issued would itself be a satisfaction of the condition prescribed under clause (b) of para 2 of the Notification 102/2007.

5.3 In the Mangalore Chemicals and Fertilizers Limited's case (supra), the Hon'ble Apex Court observed that a distinction, between the provisions of a statute which are of a substantive character and were built-in with certain specific objectives of policy on the one hand and those which are merely procedural and technical in nature on the other, must be clearly drawn. It was further held in the said decision that while interpreting an exemption clause, liberal construction should be imparted to the language thereof if the subject falls within the scope of the exemption. It was also held that, the need to resort to any interpretative process would arise only where the meaning is not manifest on the plain words of the statute. As held by the Hon'ble Apex Court in the New India Sugar Mills Limited v. Commissioner of Sales Tax, Bihar [AIR 1963 S.C. 1207]- "it is a recognized rule of interpretation of statutes that expressions used

therein should ordinarily be understood in a sense in which they best harmonize with the object of the statute, and which effectuate the object of the Legislature". Applying the ratio of these decisions to the facts of the case before us, it can be seen that the condition relating to endorsement on the invoice was merely a procedural one and the purpose and object of such an endorsement could be achieved when the duty element itself was not specified in the invoice. Since the object and purpose of the condition is achieved by non-specification of the duty element, the mere non-making of the endorsement could not have undermined the purpose of the exemption. Thus we concur with the view taken by this Tribunal in the cases of Equinox Solution Limited and Nova Nordisk India Private Limited (supra)."

7. It appears that the decision would bind the Revenue, and the decision having been rendered on 24.06.2014, the authority ought to have taken note of the said decision. Thus, for the above reasons, this Court is of the considered view that the application filed by the petitioner for refund should be reconsidered on merits and in accordance with law.

8. Accordingly, this writ petition is allowed, the impugned order is set aside and the matter is remanded to the first respondent for fresh consideration, who shall afford an opportunity of personal hearing to the authorised representative of the petitioner, consider their submissions, and pass fresh orders on merits and in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

-sd/-

सत्यमेव जयते Assistant Registrar

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Sub-Assistant Registrar

To

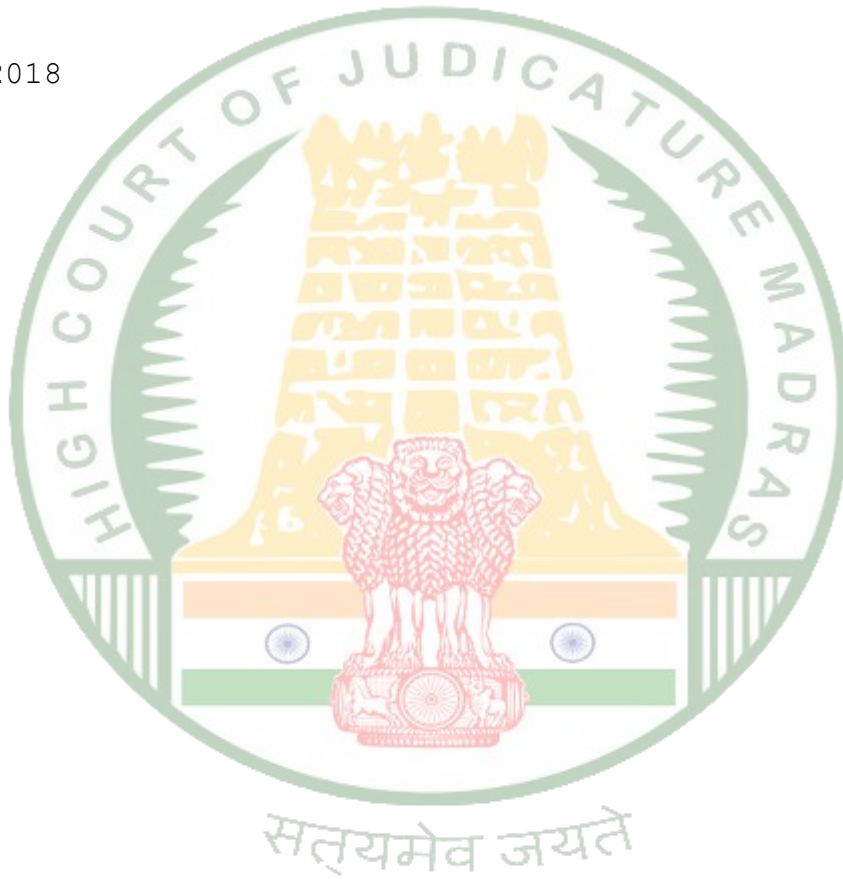
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+1 C.C. to MR.A.P.Srinivas Advocate SR.NO. 25043

W.P.No.3885 of 2018

RK (CO)
VS 18.04.2018



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