Reserved on : 26.02.2018

Delivered on : 01.03.2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2018

CORAM

THE HON'BLE MR. JUSTICE M.DURAISWAMY

W.P.No.33914 of 2017
and
W.M.P.No.37615 of 2017

M/s.Leitwind Shiram Manufacturing Limited
Plot No.D-17, Sipcot Industrial Complex,
Gummidipoondi,
Thiruvallur District - 601 201
rep by its General Manager (Supply Chain)
and Authorize Signatory V.Ravichandran .. Petitioner

Vs.

1.The Assistant/Deputy Commissioner of Customs (Gr.4),
No.60, Rajaji Salai, Customs House,
Chennai - 600 001.

2.The Commissioner of Customs (SIIB),
Chennai III Commissionerate,
No.60, Rajaji Salai, Customs House,
Chennai - 600 001.

3.The Deputy Commissioner of Customs (SIIB),
Chennai III Commissionerate,
No.60, Rajaji Salai, Customs House,
Chennai - 600 001.

4.The Appraiser (SIIB),
No.60, Rajaji Salai, Customs House,
Chennai - 600 001. .. Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified mandamus calling for the records connected with the Seizure Memo dated 04.10.2017 in file F.No.ENO/91/2017-SIIB issued by the 4th respondent herein and to quash the same,insofar as the said Seizure Memo issued is without jurisdiction, authority of law, against the provisions of law and in total violation to the principles of natural justice and consequently direct the respondents herein to allow the clearance of the goods covered under Ex-Bond Bill of Entry No.3056014 dated 31.08.2017 without requiring the payment of Anti Dumping Duty under Notification No.17/2017 Customs (ADD) dated 11.05.2017.

For Petitioner : Mr.N.Viswanathan

For Respondent : Mr.V.Sundareswaran, Standing Counsel

O R D E R

The petitioner has filed the above Writ Petition to issue a Writ of Certiorarified mandamus calling for the records connected with the Seizure Memo dated 04.10.2017 issued by the 4th respondent and to quash the same,insofar as the said Seizure Memo issued is without jurisdiction and consequently direct the respondents to allow the clearance of the goods covered under Ex-Bond Bill of Entry dated 31.08.2017 without requiring the payment of Anti Dumping Duty under Notification dated 11.05.2017.

2.According to the petitioner, they are engaged in the manufacture of Wind Mills and parts of Wind Mills duly registered with the Excise Department and presently under the new regime of Goods and Service Tax (GST). For the purpose of manufacture of the said goods, they purchased indigenous goods as well as engaged themselves in the import of goods to be used in the manufacture of the final goods. During their course of business, they imported one consignment consisting of 5507.403 MTs of Hot Rolled Painted Steel Plates from overseas supplier Singapore in terms of Sales Contract dated 19.10.2015 and the Purchase Order dated 02.11.2015 and initially filed a Warehouse Bill of Entry dated 22.01.2016. Due to certain financial crises faced by them, has to clear the same at a later date. The goods stored in the licensed Warehouse were removed periodically by the petitioner by filing necessary Ex-Bond Bills of Entry. The same were assessed by the proper Officer of Customs and appropriate duty were paid.

2.1.According to the petitioner, in the usual course, they filed the Ex-Bond Bill of Entry dated 22.01.2016 for the clearance of 878.395 MTs of Warehoused goods, assessed by the proper Officer of the Customs and duty paid and Out of Charge Order given for clearance of the cargo in terms of Section 47 of the Customs Act. Pursuant to the Out of Charge Order, the 4th respondent detained the goods to interpret the Anti Dumping Duty Notification dated 11.05.2017 claiming that the Anti Dumping

Duty on the subject goods will have to be paid by taking the date of filing of the Ex-Bond Bill of Entry dated 31.08.2017 without considering the Warehouse Bill of Entry dated 22.01.2016, which is much prior to the coming into force of the levy of even the provisional Anti Dumping Duty Notification dated 08.08.2016.

2.2.Further according to the petitioner, the Ex-Bond Bill of Entry was assessed by the proper Officer of the Customs and Out of Charge Order was issued in terms of Section 47 of the Customs Act, thus, making the assessment final and if the Department is aggrieved over the said assessment, the only recourse available to the Department is to get the assessment reviewed or appealed in the manner known to law or to issue necessary notice under the provisions of Customs Act for demand of short levy or non-levy of duty, which was absolutely not done in the present case.

2.3.According to the petitioner, they have addressed various representations, but did not receive any positive reply. The 4th respondent issued a Seizure Memo dated 04.10.2017, claiming final Anti Dumping Duty Notification dated 11.05.2017, in terms of which the subject Ex-Bond Bill of Entry dated 31.08.2017 is liable for payment of Anti Dumping Duty. The 4th respondent alleged that the petitioner/importer had attempted to clear the goods for home consumption without payment of Anti Dumping Duty on the date of filing of Ex-Bond Bill of Entry by not showing the Notification, which was claimed as a mis-declaration and is liable for confiscation under Section 111 (m) of the Customs Act and accordingly, the same was seized under Section 110 of the Customs Act.

3.According to the respondents, the Government of India imposed provisional Anti Dumping Duty dated 08.04.2016 on Hot Rolled Flat products of Alloy or non-Alloy Steels in Coils as well as Steels not in Coils of width 4950 mm and thickness 150 mm of China, Korea, Japan and Indonesian origin. The said Notification was in existence between 08.08.2016 and 08.04.2017. Subsequently, the Government of India issued final Anti Dumping Duty Notification dated 11.05.2017. As per the said Notification, the Reference Value minus the Landed Value is chargeable as Anti Dumping Duty. On verification, it was found that 878.395 MTs of Hot Rolled Painted Steel Plates covered under Ex-Bond Bill of Entry dated 31.08.2017 are liable to Anti Dumping Duty leviable under Notification dated 11.05.2017.

3.1.According to the respondents, the petitioner's attempt to clear the goods for home consumption without payment of Anti Dumping Duty leviable on the date of filing of Ex-Bond Bill of Entry for home consumption, was contrary to the law. The petitioner, while filing Ex-Bond Bill of Entry, had self-assessed the goods without even Safe Guard Duty. The petitioner had neither made any attempt to correct their self-assessment nor did they bring it to the notice of the Customs before payment of Duty. Therefore, the petitioner's act of omission and commission has led to evasion of payment of appropriate Duty and had caused loss to the Government Exchequer. It has also come to light that the petitioner had already sold 3600 MTs of Steel Plates on In-Bond Sale to M/s.V.K. Industrial Corporation without payment of Anti Dumping Duty, approximately amounting to Rs.3.81 crores. The petitioner was informed that the Anti Dumping Duty imposed by the Government of India vide Notification dated 11.05.2017 will be applicable in their case.

3.2.As per Section 15(1)(b) of the Customs Act, in the case of goods cleared from a Warehouse under Section 68, the rate of Duty and Tariff valuation, if any applicable to any imported goods, shall be the rate and valuation in force on the date on which a Bill of Entry for home consumption in respect of such goods is presented under that Section. The Seizure Memo was issued under Section 110 of the Customs Act.

3.3.The respondents have not levied the Anti Dumping Duty retrospectively, but levied prospectively only. Further, the respondents contended that whether the Anti Dumping Duty is leviable or not is a disputed question of fact and the same cannot be adjudicated by way of a Writ Petition. In these circumstances, the respondents prayed for dismissal of the Writ Petition.

4.Heard Mr.N.Viswanathan, learned counsel appearing for the petitioner and Mr.V.Sundareswaran, learned standing counsel appearing for the respondents.

5.On a careful consideration of the materials available on record and the submissions made by the learned counsel on either side, it could be seen that the goods declared as Hot Rolled Painted Steel Plates imported, vide Ex-Bond Bill of Entry dated 31.08.2017, by the petitioner, were attempted to be cleared by evading payment of Anti Dumping Duty, was intercepted by the Special Intelligence and Investigation Branch (SIIB), Customs House, Chennai. The petitioner has self-assessed the goods under the Customs Tariff Item 7225 40 19 and paid the applicable Duty, except Anti Dumping Duty. The petitioner had originally filed the Warehouse Bill of Entry dated 22.01.2016 for clearance of 55.07.403 MTs of Steel Plates and Warehoused goods. Subsequently, they filed the subject Ex-Bond Bill of Entry for clearance of 878.395 MTs of Warehoused goods.

5.1.The Government of India imposed provisional Anti Dumping Duty, vide Anti Dumping Duty Notification dated 08.04.2016, on

Hot Rolled flat products of Alloy or non-Alloy Steels in Coils as well as Steels not in Coils of width 4950 mm and thickness 150 mm of China, Korea, Japan and Indonesian origin. The said Notification was in existence between 08.08.2016 and 08.04.2017. Thereafter, the Government of India issued final Anti Dumping Duty Notification dated 11.05.2017 and as per the said Notification, the subject imported item falling under Sl.No.36 wherein the Reference Value of USD 561 per MT is stipulated. As per the Anti Dumping Duty Notification, the Reference Value minus the Landed Value of the goods is chargeable as Anti Dumping Duty. Based on the above uncontested detail, on verification of the duty liability, it was noticed by the respondents that 878.395 MTs of Hot Rolled Painted Steel Plates covered under Ex-Bond Bill of Entry dated 31.08.2017 are liable to Anti Dumping Duty leviable under Notification dated 11.05.2017. The attempt made by the petitioner to clear the goods for home consumption without payment of Anti Dumping Duty leviable on the date of filing of the Ex-Bond Bill of Entry for home consumption was clearly contrary to law.

5.2.As per para 2 of the Manual on Self-Assessment, it could be seen that penal provisions have to be invoked against the importers/exporters for errors in self-assessment when there is willful intention to evade Duty or non-compliance of a condition. While filing the self-assessment, the petitioner did not declare the Anti Dumping Duty Notification and also without Safe Guard Duty. The petitioner has not taken any steps to correct the self-assessment or brought it to the notice of the Customs Officials.

5.3.It is also brought to the notice of this Court that the respondents brought it to the notice of the petitioner that the Notification issued by the Government of India dated 11.05.2017 will be applicable to their case.

5.4.It was also brought to the notice of this Court that inspite of the summons issued to the petitioner under Section 108 of the Customs Act, they failed to co-operate for investigation and also failed to appear before the proper Officer for enquiry.

5.5.The seizure of goods was effected under Section 110 of the Customs Act. The 4th respondent had reason to believe that the petitioner evaded payment of Anti Dumping Duty, therefore, effected seizure of goods under Section 110.

5.6.It is settled position that the date of filing of Bill of Entry for home consumption is the relevant date for levy of

Duty, including Anti Dumping Duty. As per Section 15(1)(b) of the Customs Act, in the case of goods cleared from a Warehouse under Section 68, the rate of Duty and Tariff valuation, if any applicable to any imported goods, shall be the rate and valuation in force on the date on which a Bill of Entry for home consumption in respect of such goods is presented under that Section.

5.7.Admittedly, the goods covered under the impugned Seizure Memo were not cleared out of Customs.

5.8.It is also pertinent to note that Section 9A(8) of the Customs Tariff Act, 1975 has been amended with effect from 19.08.2009. The amended provision of Section 9A(8) of the Customs Tariff Act reads as follows:

> " * * (8) The provisions of the Customs Act, 1962 and the rules and regulations made there-under, including those relating to the date of determination of rate of duty, assessment, non-levy, short levy, refunds, interest, appeals, offences and penalties shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act.
>
> * Substituted on and from the 1st day of January, 1995."

The said amendment to Section 9A (8) was made with retrospective effect from 1st January 1995 when Anti Dumping Duty Rules were notified.

5.9.The contention of the learned counsel appearing for the petitioner that the Anti Dumping Duty cannot be levied retrospectively, cannot be accepted for the reason that the date of filing of Bill of Entry for home consumption is the relevant date for levy of Duty, including Anti Dumping Duty. The levy of Anti Dumping Duty under the Notification dated 11.05.2017 is applicable to the goods cleared under the Ex-Bond Bill of Entry dated 31.08.2017.

5.10.The contention of the petitioner that the respondent had issued the Seizure Memo even without issuing a show cause notice, cannot stand for the reason that the respondent should issue a notice under Section 110(2) within six months of the seizure and if the respondent failed to issue the notice within the time prescribed under Section 110 (2), the goods shall be returned to the person from whose possession they were seized. Therefore, the respondents still have got time to issue notice to the petitioner under Section 110 (2) of the Customs Act. If the petitioner is aggrieved over the notice, they can challenge the same in accordance with law.

6.In these circumstances, I do not find any error or irregularity in the Seizure Memo dated 04.10.2017 issued by the 4th respondent. The Writ Petition is liable to be dismissed. Accordingly, the Writ Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True copy//

Sub Assistant Registrar

va

To

1.The Assistant/Deputy Commissioner of Customs (Gr.4),
No.60, Rajaji Salai, Customs House,
Chennai - 600 001.

2.The Commissioner of Customs (SIIB),
Chennai III Commissionerate,
No.60, Rajaji Salai, Customs House,
Chennai - 600 001.

3.The Deputy Commissioner of Customs (SIIB),
Chennai III Commissionerate,
No.60, Rajaji Salai, Customs House,
Chennai - 600 001.

4.The Appraiser (SIIB),
No.60, Rajaji Salai, Customs House,
Chennai - 600 001.

+1cc to Mr.N.Viswanathan, Advocate SR.No.15804
+1cc to Mr.V.Sundareswaran, Advocate SR.No.15971

W.P.No.33914 of 2017
and W.M.P.No.37615 of 2017

NRK(CO)
GN(02/04/2018)