IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.09.2018

CORAM:
THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.Nos.23459 & 23460 of 2018

1.M/s.M.M.Enterprises,
109, Audiappa Naicken Street,
Sowcarpet, Chennai - 600 079.
By its Proprietrix Mrs.Punidevi

...Petitioner in W.P.No.23459 of 2018

2.M/s.Prabhavna Impex,
109, Audiappa Naicken Street,
Rainbow Plaza, 2nd Floor,
Sowcarpet, Chennai - 600 079.
By its Proprietor Mr.Kamlesh Kumar

...Petitioner in W.P.No.23460 of 2018

Vs

The Assistant Commissioner of Customs (Refunds)
Office of the Commissioner of Customs II,
No.60, Rajaji Salai, Customs House,
Chennai - 600 001.

...Respondent in W.P.Nos.23459 & 23460 of 2018

PRAYER:-

Writ Petitions filed under Article 226 of the Constitution of India praying to pass an order of a Writ of Mandamus, directing the respondent herein to consider the representation of the petitioners dated 03.08.2018, seeking the issue of a Show Cause Notices raising the objections, if any, for the proposed rejection of their refund claim dated 16.03.2018 and 19.03.2018 respectively, thereby calling upon the petitioners to offer their explanation to the said proposal and to pass an appropriate appealable order in accordance with law after granting them a reasonable opportunity of hearing in strict compliance with the principles of natural justice.

For Petitioner : Mr.S.Baskaran
(in W.P.Nos.23459 & 23460 of 2018)

For Respondent : Mr.S.Rajasekar, Standing Counsel
(in W.P.Nos.23459 & 23460 of 2018)

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COMMON ORDER

In both these writ petitions, the respective writ petitioners seek for Mandamus, directing the respondent to consider their respective representations dated 03.08.2018, wherein and whereby, they sought for issuance of show cause notice raising the objections, if any, for the proposed rejection of their refund claim dated 16.03.2018 and 19.03.2018 respectively, thereby calling upon the petitioners to offer their explanation to the said proposal and pass appropriate orders in accordance with law, after granting them a reasonable opportunity of hearing.

2. Mr.S.Rajasekar, learned Standing Counsel takes notice for the respondent in both these writ petitions. By consent of parties, these writ petitions are taken up for final disposal at the admission stage itself.

3. It is seen that the petitioners sought for refund of Countervailing Duty (CVD), collected from the petitioners in respect of the subject matter transaction, by contending that such collection of duty (CVD) is against the order passed by the Apex Court in a case filed by one such Importer viz,. M/s. Enterprises International Ltd. dated 05.08.2016. It is the further contention of the petitioners that similarly situated persons though not approached the Apex Court, were given the benefit of refund of CVD paid by them. By contending so, the present writ petitions are filed with the relief, as stated supra.

4. Mr.S.Baskaran, learned counsel for the petitioners contended that the refund applications filed by the petitioners cannot be rejected, without issuing any show cause notices, calling upon the petitioners to explain as to why such claim is to be accepted. Thus, he contended that the respondent in these cases has not done so.

5. On the other hand, the learned standing counsel appearing for the respondent submitted that the very prayer sought for in these writ petitions is not maintainable, in view of the fact that the petitioners have already suffered with the orders of rejection dated 17.07.2018, rejecting the petitioners' applications for refund. Therefore, he contended that without challenging the said orders, the petitioners are not entitled to seek for mandamus as prayed for in these writ petitions.

6. Upon hearing both sides, it is evident that the petitioners' applications for refund are already rejected by the orders dated 17.07.2018, passed by the respondent herein. Correctness or otherwise of the said orders and the justification of the reasoning stated therein have to be tested before the next appropriate Authority/Forum, only by challenging

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those orders and not by filing mandamus as prayed for in these writ petitions. Needless to state that when the rejection orders are already passed, the petitioners have to first challenge the said orders and canvass all the points as raised in these writ petitions and not to seek simple mandamus as sought herein.

7. At this juncture, the learned counsel for the petitioners prayed for two weeks time to make such challenge before appropriate forum.

8. Accordingly, without expressing any view on the merits of the contentions raised by the petitioners as well as the reasons stated in the rejection orders dated 17.07.2018, these writ petitions are disposed of, by granting liberty to the petitioners to challenge those orders within a period of two weeks from the date of receipt of a copy of this order, in the manner known to law, by raising all the contentions. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

krk/mk

To

The Assistant Commissioner of Customs (Refunds)
Office of the Commissioner of Customs II,
No.60, Rajaji Salai, Customs House,
Chennai - 600 001.

+2cc to Mr.N.Viswanathan, Advocate, S.R.No.62559 and 62560
+2cc to Mr.S.Rajasekar, Advocate, S.R.No.63248 and 63249

W.P.Nos.23459 & 23460 of 2018

VBA(CO)

rrs 03/10/2018

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