IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.01.2018

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition No.2177 of 2012
and
M.P.No.1 of 2012

M/s.Yamazen Corporation, India Branch, Chennai,
Represented by L.Indrajithu, General Manager,
Plot No.69, Sivananda Nagar,
17th Street, Senthil Nagar,
Kolathur, Chennai 600 099. ...Petitioner

Vs.

Joint Commissioner of Customs (SVB)
Customs House,
60, Rajaji Salai,
Chennai 600 001. ...Respondent

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari, calling for the records on the file of the respondent in order in original No.17735/2011 dated 28.11.2011 in F.No.S50/21/2003-SVB - Job No.18685/2011 and to quash the same as arbitrary and illegal or any other writ order.

For Petitioner : Mr.Joseph Prabakar
For Respondent : Mr.A.P.Srinivas
Senior Standing Counsel

O R D E R

Heard Mr.Joseph Prabakar, the learned counsel appearing for the petitioner and Mr.A.P.Srinivas, the learned Senior Standing Counsel for the respondent.

2. The petitioner has challenged the order-in-original passed by the respondent, dated 28.11.2011, which admittedly, is an appealable order, as Appeal lies to the Commissioner of Customs (Appeals), Chennai. Therefore, the Court posed a question to the learned counsel for the petitioner, as to how, the Writ Petition is maintainable, and why, the petitioner has

approached this Court, by way of this Writ Petition. The learned counsel for the petitioner invited the attention of the Court to the dates and events, which have occurred since 2004, and upon hearing the learned counsel for the petitioner and pursuing the materials on record, I am convinced that this Court would be fully justified in entertaining this Writ Petition.

3. The order, dated 29.12.2004 was passed by the Joint Commissioner of Customs, Special Valuation Branch (SVB) holding that the importer, viz., the petitioner and the supplier at Japan were related to each other, in terms of Rule 2(2) (v) of the Customs Valuation Rules, 1988 and to arrive at values of the imported goods by the petitioner, the corresponding values may be taken as basis and it may be loaded by 250%. Aggrieved by the same, the petitioner preferred an Appeal before Commissioner of Customs (Appeals), who, by order, dated 12.09.2005, rejected the petitioner's Appeal and confirmed the order-in-original of the Joint Commissioner of Customs, SVB. As against the same, the petitioner approached the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) and the CESTAT, by order, dated 25.04.2006, made a very strong observation against the manner, in which, the Joint Commissioner of Customs, SVB has proceeded with the matter, and held that the order, dated 29.12.2004, smacks of breach of principles of natural justice and this grave infirmity was over looked by the Commissioner of Customs (Appeals), as a result, the order is set aside and the matter is remanded for fresh consideration on the valuation issue after examining all evidentiary materials on record and hearing the assessee.

3.1 On such remand, the Additional Commissioner of Customs, SVB passed an original-in-original, dated 25.08.2006 and the finding rendered by the Authority is fully in favour of the petitioner. The Revenue preferred an appeal before the Commissioner (Appeals) who, by order-in-appeal, dated 20.05.2009, held that the matter requires re-consideration, and accordingly, set aside the order-in-original, dated 25.08.2006 and remanded the matter to the respondent for fresh consideration.

3.2 On such remand, what was excepted of the respondent was to consider the matter for afresh. The respondent should have referred to the observations contained in the order passed by the Commissioner (Appeals), dated 20.05.2009, heard the assessee in person and taken an independent decision based on the materials furnished by the petitioner. Unfortunately, the respondent though passed an elaborate order, running to nearly 8 pages, committed a serious error in holding that, he does not find any infirmity in the order-in-original, dated 29.12.2004 and the most of the attention of the respondent was that, the said order, dated 29.12.2004 was set aside by the CESTAT, by order, dated 25.04.2006 wherein, very strong observations were made against the manner-in-which, the said Joint Commissioner had dealt with the matter and passed the order dated 29.12.2004, and not stopping with that, made an observation that, the issue relating to violation of principles of natural justice was not noticed by the Commissioner (Appeals) while rejecting the Appeal, by order, dated 12.09.2005.

4. Therefore, the respondent herein could not have relied on and even referred to the order, dated 29.12.2004, but what was expected of him was to take an independent decision in the matter based on the documents placed by the petitioner, after hearing the assessee. This, having not been done, the impugned order calls for interference. It is made clear that this Court has not gone into the merits of the matter and the correctness of the impugned order has been examined only on the above grounds.

5. For the above reasons, this Writ Petition stands allowed, the impugned order is set aside and the matter is remanded to the respondent for fresh consideration, who shall take an independent decision in the matter, uninfluenced by any of the earlier orders and the decision of the respondent should be a speaking order after taking into consideration of the documents placed by the petitioner and hearing the authorized representative of the petitioner. No costs. Consequently, Connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True copy//

Sub Assistant Registrar

dna/sd
TO
The Joint Commissioner of Customs (SVB)
Customs House, 60, Rajaji Salai,
Chennai 600 001.

+1cc to Mr.A.P.Srinivas, Advocate SR.No.4679

Writ Petition No.2177 of 2012

GN(09/03/2018)