IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :25.10.2018

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THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.17177 & 17178of 2014
and
M.P.Nos.1 & 2 of 2014 (2 M.Ps.)

M/s.Tube Investments of India
Ltd. Rep. by Its General Manager (Taxation)
Avadi, Chennai. ...Petitioner in both W.Ps

Vs

1.Union of India
Rep. by its Secretary, Ministry of Finance
Department of Revenue, New Delhi 110 001.

2.The Commissioner of Customs,
Tiruchirapalli. ...Respondents in both W.Ps

Prayer in WP.No.17177 of 2014: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent relating to the file C.No.VIII/48/33/2013- Cus.Pol. dated 20.12.2013 quash the same and consequently direct the 2nd respondent to issue permission in respect of goods already cleared through ICD Arakkonam during February 2013 to July 2013 under Notification No.104/2009 dated 14.9.2009.

Prayer in WP.No.17178 of 2014: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the 2nd respondent relating to the show cause notice C.No.VIII/10/02/2014-cus.Adjn.dated 11.02.2014 issued and quash the same.

For Petitioners in both WP.s: Mr.Raghavan Ramabadvan
for Mrs.Lakshmikumaran

For Respondents in both WPs.: Mr.A.P.Srinivas
Standing Counsel

COMMON ORDER

The order dated 20.12.2013 issued by the Commissioner of Customs, Thiruchirapalli, is under challenge in this writ petition.

2. The learned counsel appearing for the petitioner states that the Government of India introduced Status Holder Incentive Scheme granting exemption to specified capital goods imported from various ports across the Country. The petitioner is engaged in the manufacture of precision steel tubes, steel trips, bi-cycles, motor vehicle parts, automotive and industrial chains etc., in their various factories located across the country. For the purpose of manufacturing the said products, the writ petitioner is engaged in the business of importing capital goods. Admittedly, the petitioner is importing goods from ICD, Arakkonam wherein the storage point is available. The learned counsel appearing for the petitioner states that Status Holder Incentive Scheme implemented by the Government of India states the names of the Ports in Clause 5 of the notification dated 14.09.2009.

3. The grievances of the writ petitioner is that almost majority of the ports across the Country are named in the notification. However, the Port at ICD, Arakkonam, has not been included in the list of Ports. Thus, the benefit of incentives introduced by the Government of India had not been extended to the writ petitioner, while importing capital goods.

4. The learned counsel appearing for the petitioner states that since the ICD, Arakkonam has not been included in the list of ports in the notification, the petitioner made a representation to the competent authority to extend the benefit to the capital goods imported at ICD, Arakkonam. The contention of the writ petitioner is that the benefit of the scheme was extended prospectively in favour of the writ petitioner with effect from the year 2014. However, the Commissioner of Customs rejected the claim of the writ petitioner to grant the benefit of incentive scheme with retrospective effect from the date of implementation of the scheme through the notification issued by the Government of India. The petitioner had specified five imports transactions which was made prior in the year 2014, enabling them to avail the benefit of incentive scheme as per the notification issued by the Government of India. Five import transactions were considered on account of the fact that the

Commissioner can issue orders granting the benefit of the scheme prospectively and not retrospectively. The impugned order of the Commissioner dated 20.12.2013, states that the permission will be given on case to case basis which will be followed prospectively. The case of the writ petitioner will not cover imports in respect of the 5 import transactions done prior to the concession extended. Challenging the said order, present writ petition has been filed.

5. The learned counsel appearing for the petitioner urged this Court by stating that the non-inclusion of the name of the port at ICD Arakkonam was an omission on the part of the Government of India and no reason has been furnished for the non-inclusion of the ICD, Arakkonam in the list of ports. Other ICDs' were incorporated in the scheme, while so, the ICD, Arakkonam, alone, has not been incorporated in the scheme. Therefore, the inference has to be drawn that it is the clear case of omission by mistake and for which, the petitioner cannot be penalised. When all other ICDs' are enjoying the benefit of incentive scheme, the importers at ICD, Arakkonam alone cannot be deprived of such benefits. However, at the time of granting permission for importing, no objections were raised by the competent authority with the writ petitioner. However, only after the completion of the import process, the question has been raised on the basis of audit objections. The audit objections were raised on the ground that ICD, Arakkonam has not been incorporated in the list of ports in the Government of India notification. However, the case of the writ petitioner was considered prospectively with effect from the year 2014 and therefore, the five import transactions done by the writ petitioner prior to the year 2014, also should be considered favorably and the benefit of incentive scheme is to be extended to the writ petitioner.

6. The learned counsel urged this Court by stating that the scheme stipulates that the Commissioner or Inspector may within his jurisdiction, by special order, or by a Public Notice, and subject to such conditions as may be specified by him permits import and export from any other seaport / airport / inland container depot or through any land customs station. Relying on the said provision clause incorporated in the Scheme.

7. The learned counsel appearing for the petitioner states that the permission includes post permission also. Therefore, the case of the writ petitioner ought to have been considered for the purpose of granting permission in respect of the five import transactions. In other words, the permission includes the grant of post permission also. Thus, the Commissioner is

competent to consider the case of the writ petitioner for the purpose of extending the benefit of the scheme in respect of the their import transactions done by the writ petitioner as per their own representations.

8. However, the learned Standing Counsel appearing on behalf of the respondents is unable to provide convincing reasons for non-inclusion of the ICD, Arakkonam. Counter is also silent in this regard. In the event of exclusion of a particular port or ICD, certain reasons are to be provided. However no reasons are given.

9. The learned standing counsel appearing for the respondents states that such a ground of discrimination has not been raised by the writ petitioner in the writ petition. Eventhen, this Court is bound to consider all the legal grounds across the bar at the time of hearing of the writ petitions.

10.. When the importers of other ports and ICD, are availing the benefit of incentive scheme, importers of particular port cannot be denied such a benefit. Such a discrimination, if at all must be substantiated by the respondents. However,the learned counsel appearing for the respondents is unable to provide any convincing reasons for the purpose of exclusion of ICD Arakkonam, from the list of ports incorporated in the scheme.

11. This apart, the case of the writ petitioner was considered favorably by the authorities competent from the year 2014 onwards. As of now, the writ petitioner is availing the benefit of scheme and there was no objection at all. Thus, the five import transactions already done also deserve to be considered favorably based on the representation submitted by the writ petitioner. In view of the fact that the respondents have not furnished any candid reason for the purpose of non-inclusion of the ICD, Arakkonam in the list of scheme, the case of the writ petitioner deserves consideration on the hands of the respondents themselves.

12. In view of the fact that the Commissioner in his order dated 20.12.2013 categorically states that the cases will be considered on case to case basis. This Court is of an opinion that the case of the petitioner is to be considered based on their representation and the grounds raised thereof.

13. In view of the above observation, the writ petitioner is directed to submit a fresh representation setting out all the facts, details and documents within a period of three weeks from the date of receipt of a copy of this order. On receipt of any such representation from the writ petitioner, the 2nd respondent is directed to consider the same, in the light of the observations made in this order and pass orders on merits and in accordance with law within a period of 12 weeks from the date of receipt of such representation. In respect of other writ petition filed in WP.No.17178 of 2014, till the decision is taken on the representation to be submitted by the writ petitioner, the said show cause notice shall not be acted upon and the same shall be kept in abeyance. In this view of the matter, the impugned order passed by the 2nd respondent in proceedings C.No.VIII/48/33-2013- Cus.Pol. dated 20.12.2013 is set aside. Accordingly, the writ petitions are disposed of. Consequently, connected miscellaneous petition are closed.

s/d-
Assistant Registrar(CS V)

True Copy

Sub-Assistant Registrar

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To

1.The Secretary to Government of India
Ministry of Finance
Department of Revenue, New Delhi 110 001.

2.The Commissioner of Customs,
Tiruchirapalli.

+2 Ccs to Mr.Lakshmi Kumaran, Advocate sr 73645.
+1 CC to Mr.A.P.Srinivas, Advocate sr 73743.

W.P.No.17177 & 17178 of 2014

SSV(CO)
SP(20/11/2018)