IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.01.2018

Coram

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.1886 of 2012

Vasta Bio-Tech Private Limited,
Represented by its Director,
S.N.Srikanth,
'SVN House',
C.P.Ramasamy Aiyer Road,
Alwarpet, Chennai - 600 018. ...Petitioner

Vs.

The Assistant Commissioner of Customs
(Refunds - AIR),
Office of the Commissioner of Customs,
(Airport and Air Cargo),
Integrated Cargo Complex,
Meenambakkam, Chennai - 600 027. ...Respondent

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari, to call for the records on the files of the respondent herein in Order-in-Original No.637/2011-REFUNDS-AIR, dated 21.12.2011, and to quash the same, insofar as it relates to the rejection of the claim of refund made by the petitioners under Notification No.102/2007-Customs, dated 14.09.2007, relating to bill of entry No.367142, dated 10.12.2010 and bill of entry No.395722, dated 14.01.2011.

For Petitioner : Mr.K.Narayanan for
Mr.N.Inbarajan

For Respondent : Mr.B.Rabumanohar
Special Government Pleader

O R D E R

Heard Mr.K.Narayanan, the learned Counsel appearing for Mr.N.Inbarajan, the learned counsel for the petitioner and Mr.B.Rabumanohar, the learned Special Government Pleader for the respondent.

2. The petitioner is aggrieved by the impugned order-in-original, dated 21.12.2011, insofar as it rejects the petitioner's claim for refund due to the extent of Rs.1,85,586/-.

3. The main ground, on which, the impugned order has been questioned is by contending that, before partially rejecting the refund claim, the petitioner had no opportunity to explain to the Authority, that their action was not justified.

4. In the counter affidavit filed by the respondent, the reason for rejecting the claim for refund to the tune of Rs.1,85,586/-, has been pointed out, stating that, there is no correlation between the imported goods and sale invoice.

5. The petitioner's case is that, had a show cause notice been issued to them, they would have explained to the Authority, as regards the discrepancies between the imported goods and the sale invoice, and would have extended full cooperation, and to the said effect, the reply affidavit has been filed to justify their stand. Since the partial rejection of the petitioner's claim for refund results in civil consequence, the principles of natural justice demands that the petitioner be afforded an opportunity. The explanation sought to be given by the respondent, in Para No.10 of the counter affidavit cannot be countenanced, as the statute does not put a bar for an opportunity being granted, and if statute is silent, then, principles of natural justice has to be read into the statute, so that the assessee has reasonable opportunity to put forth this case.

6. Hence, for the above reasons, the petitioner is directed to treat the impugned order-in-original, insofar as it rejects the petitioner's claim for refund of Rs.1,85,586/-is concerned, as show cause notice, submit their objections within a period of 30 days from the date of receipt of a copy of this order. On receipt of the objections, the respondent shall afford an opportunity of personal hearing to the authorized representative of the petitioner and consider the case, as projected by the petitioner and examine as to whether they are entitled for refund of balance amount of Rs.1,85,586/-. The above direction shall be complied with, within a period of 60 days from the date of receipt of the objections.

7. Accordingly, the Writ Petition stands disposed of. No costs.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

dna/sd

To

The Assistant Commissioner of Customs
(Refunds - AIR),
Office of the Commissioner of Customs,
(Airport and Air Cargo),
Integrated Cargo Complex,
Meenambakkam, Chennai - 600 027.

+ 1 cc to MR. B. Rabu Manohar, Advocate Sr.4301
+ 1 cc to Mr. N. Inbarajan, Advocate SR.4474

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(CS-VIII)
EU(27/02/2018)