IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :11.08.2018

CORAM

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.No.14718 of 2001

M/s.Sri Maharaja Refineries,
rep. by its Partner P.Sathiyamoorthy
No.125, Bhavani Road
Erode - 638 004. ... Petitioner

Vs.

1.The Union of India
Rep. by is Secretary to Govt.
Ministry of Finance
Department of Revenue
New Delhi.

2.The Commissioner of Customs (Sea)
Customs House,
Rajaji Salai,
Chennai.

3.The Deputy Commissioner of customs
Group I & II
Customs House,
Rajaji Salai,
Chennai. ... Respondents

Prayer:- Writ petition has been filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the 3rd respondent to permit clearance of the imported goods, RBD Palmolein (Edible Grade), assessed and warehoused under Bills of Entry for Warehousing Nos.022529 dated 19.07.2001; B.E.No.022765 dated 23.07.2001 and B.E.No.022987 dated 25.07.2001- covered under Bills of Lading Nos.PGG/CNI-04 to 09/13.07.2001; PGG/CNI-02/17.07.2001 and PGG/CNI-01/20.07.2001 accepting the Bills of Entry for Ex-bond clearance by adopting the value as determined in the said assessed Bills of Entry for warehousing and on payment of such calculated customs duty.

For Petitioner : Mr.Mudimannan

For Respondents : Mr.V.Sundaresan

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

ORDER

The prayer sought for in this writ petition is for the issuance of a Writ of Mandamus, directing the 3rd respondent to permit clearance of the imported goods, RBD Palmolein (Edible Grade), assessed and warehoused under Bills of Entry for Warehousing Nos.022529 dated 19.07.2001; B.E.No.022765 dated 23.07.2001 and B.E.No.022987 dated 25.07.2001- covered under Bills of Lading Nos.PGG/CNI-04 to 09/13.07.2001; PGG/CNI-02/17.07.2001 and PGG/CNI-01/20.07.2001 accepting the Bills of Entry for Ex-bond clearance by adopting the value as determined in the said assessed Bills of Entry for warehousing and on payment of such calculated customs duty.

2. The petitioner firm has imported 3 consignments of RBD Palmolein in bulk (Edible Grade) from Malaysia through Chennai port. The total quantity

imported was 9707.425 metric tonnes. The petitioner filed three bills of entries for warehousing as detailed below :-

i) B.E. No.022529 on 19.07.2001 for the quantity 2714.010 MT
ii) B.E. No.022765 on 23.07.2001 for 2999.004 MT
iii) B.E. No.022987 on 25.07.2001 for 3962.411 MT

3. The assessment of the said bills of entries for warehousing were done on the basis on the rate of duty prevalent on that date accepting the value declared in two bills of entries and enhancing the value in one bill of entry. Thereafter, it was informed to the petitioner that, the Central Government issued a Notification, 36/2001-CUS. (NT), dated 03.08.2001, fixing the tariff value for RBD Palmolein at USD372, per metric tonne.

4. In that circumstances, when the petitioner approached the department on 06.08.2001, with bills of entries for Ex-bond clearance - Home consumption, the said bills of entries were not received stating that the petitioner have to file Bills of entry for ex-bond clearance declaring the value as fixed by the Central Government in the Notification referred above, dated 03.08.2001 and can clear the goods on payment of customs duty calculated on the tariff value fixed in the said Notification. In this regard, the learned counsel appearing for the petitioner would submit that, though the Notification was issued on 03.08.2001, two conditions, which should have been fulfilled, have not been fulfilled by the respondents and based on which, the petitioner is entitled to clear the goods as per the Bills of entry submitted by them and therefore, the petitioner shall not be insisted upon to have the difference of duty, as per the

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

notification, dated 03.08.2001.

5. The learned counsel appearing for the petitioner, in this regard, would further submit that, the issue raised herein has already been considered in a number of cases and it was decided in favour of the assessee.

6. In this regard, the learned counsel relied upon a recent order of this Court made in W.P. No.22586 to 22591 of 2002, dated 01.03.2018 in M/s.G.S. Oil Limited Versus Union of India represented by the Secretary, Ministry of Law, Justice & Company affairs, New Delhi and others.

7. I have gone through the said decision of this Court relied by the learned counsel for the petitioner, where also similar prayers were sought for and it was considered by the learned Judge of this Court. The learned Judge, by taking into account, the judgment reported in 2015 (321) ELT 192 SC in the matter of

Union of India versus Param Industries Limited of the Hon'ble Apex Court, has passed the following orders :-

> 5. When the matters were taken up for hearing, the learned counsel for the petitioner submitted that in the judgment reported in 2015 (321) E.L.T. 192 (S.C.) (Union of India Vs. Param Industries Ltd.,), the Apex Court held as follows :
>
> > 3. What we find is that the High Court has stated that for bringing the notification into force and make it effective, two conditions are mandatory, viz., (1) Notification should be duly published in the official gazette, (2) it should be offered for sale on the date of its issue by the Directorate of Publicity and Public Relations of the Board, New Delhi. In the present case, admittedly, second condition was not satisfied inasmuch as it was offered for sale only on 06.08.2001, as it was published on 03.08.2001 in late evening hours and 4/5-8-2001 were holidays.
> >
> > 7. On the facts of these appeals as well, we find that though the notification may have been published on the date when the goods were cleared, it was not offered for sale by the concerned Board, which event took place much thereafter. Therefore, it was not justified and lawful on the part of the Department to claim the differential amount of duty on the basis of said notification. These appeals

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

are, accordingly, allowed only on this ground and it is not necessary to go into other issues at all."

6. The learned counsel appearing for the petitioner submitted that in view of the judgment reported in 2015 (321) E.L.T. 192 (S.C.) (Union of India vs. Param Industries Ltd.), the petitioner would work out their remedy before the appropriate Authorities, for which, the learned standing counsel for the respondents has no objection.

7. In view of the submissions made by the learned counsel on either side, the Writ petitions are disposed of giving liberty to the petitioner to work out their remedy before the appropriate Authorities in accordance with law. In such an event, the authorities shall decide the case of the petitioners on merits and in accordance with law as per the judgment reported in 2015 (321) E.L.T. 192 (S.C.) (Union of INdia vs. Param Industries Ltd.) No costs.

8. I have heard Mr.V.Sundaresan, learned standing counsel appearing for the respondent department, who would also fairly submit that the issue raised in this writ petition is covered by the said decision and accordingly, the suitable orders can be passed.

9. In view of the above decision, the petitioner is entitled to succeed in this writ petition and in the result, the following orders are passed :-

The issue raised in the writ petition to clear the goods, as per the Bills of entry already been submitted by the petitioner prior to the issuance of the Notification, dated 03.08.2001, shall be considered and taken into account and accordingly a decision can be made by the respondents by following the law declared by the Hon'ble Apex Court, in the Judgment reported in 2015 (321) ELT 192 SC in the matter of Union of India versus Param Industries Limited and do the needful as indicated above within a period of four weeks from the date of receipt of a copy of the order.

10. With these directions, the writ petition is ordered, accordingly. No costs.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

vsi2/vv-2

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

To

1. The Secretary to Govt.
   Ministry of Finance
   Department of Revenue
   New Delhi.

2. The Commissioner of Customs (Sea)
   Customs House,
   Rajaji Salai,
   Chennai.

3. The Deputy Commissioner of customs
   Group I & II
   Customs House,
   Rajaji Salai,
   Chennai.

+1cc to Mr.V.Sundareswaran, Advocate, S.R.No. 55491
+1cc to Mr.K.Jayachandran, Advocate, S.R.No. 55170

W.P.No.14718 of 2001

GN(06/09/2018)

HIGH COURT OF JUDICATURE MADRAS
सत्यमेव जयते
WEB COPY