IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 08..03.2018

CORAM

THE HON'BLE MR. JUSTICE M.DURAISWAMY

W.P.Nos.14958 & 14959 of 2001

Sivam & Co.,
rep by its Partner K.Paramasivam,
128, Bhavani Road,
Erode - 638 004. ..Petitioner in W.P.No.14958/2001

M/s.Sri Maharaja Industries,
rep by its Proprietor K.Paramasivam,
No.125, Bhavani Road,
Erode - 4. ..Petitioner in W.P.No.14959/2001

Vs.

1.Union of India
rep by the Secretary,
Ministry of Finance,
Department of Revenue, New Delhi.

2.The Commissioner of Customs (Sea),
Customs House, Chennai - 600 001.

3.The Deputy Commissioner of Customs,
Group I & II,
Customs House, Rajaji Salai,
Chennai - 600 001. .. Respondents in both W.Ps

Petitions filed under Article 226 of the Constitution of India to issue Writ of declaration declaring that the Notification No.36/2001 Customs (NT) dated 03.08.2001 is void and unenforceable on account of its arbitrariness and unreasonableness so far as the petitioners are concerned.

For Petitioner (in both W.Ps.) : Mr.V.Sanjeevi

For Respondents (W.P.No.14958/2001) : Mr.K.Magesh, Senior Standing Counsel

(W.P.No.14959/2001) Mr.A.P.Srinivas, Senior Standing Counsel

COMMON ORDER

These Writ Petitions have been filed by the petitioner to issue writs of declaration declaring that the Notification dated 03.08.2001 is void and unenforceable on account of its arbitrariness and unreasonableness so far as the petitioners are concerned.

2.Heard Mr.V.Sanjeevi, learned counsel for the petitioners in both Writ Petitions, Mr.K.Magesh, learned Senior Standing Counsel for respondents in W.P.No.14958/2001 and Mr.A.P.Srinivas, learned Senior Standing Counsel for the respondents in W.P.No.14959/2001.

3.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:

> "...
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> 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 6-8-2001, as it was published on 3-8-2001 in late evening hours and 4/5-8-2001 were holidays.
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> ...
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> 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 are, accordingly, allowed only on this ground and it is not necessary to go into other issues at all."

4.The learned counsel appearing for the petitioners 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 petitioners would work out their remedy before the appropriate Authorities, for which, the learned standing counsel for the respondents has no objection.

5.In view of the submissions made by the learned counsel on either side, the Writ Petitions are disposed of giving liberty to the petitioners 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.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

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

2.The Commissioner of Customs (sea),
Customs House, Rajaji Salai,
Chennai - 600 001.

3.The Deputy Commissioner of Customs,
Group I & II,
Customs House, Rajaji Salai,
Chennai - 600 001.

+1 cc to Mr.A.P.Srinivas Advocate sr 17896
+1 cc to Mr.K.Magesh Advocate sr 17636

W.P.Nos.14958 & 14959 of 2001

kk(co)
aa23/03/2018