IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2018

CORAM

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.32753 of 2018
and
W.M.P.Nos.37960 & 37963 of 2018

M/s.Big Bags International Private Limited
Represented by Mehul Arvind Shah
Director
61, Ndakerappa Industrial Estate
7, Andrahalli Main Road,
Vishwaneedam Post, Bangalore-560 091. ...Petitioner

Vs

1. The Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, 26, Sashtri Bhavan Annexe Building, Haddows Road, Chennai-6.

2. The Commissioner of Customs (Sea-Export) Custom House, 60, Rajaji Salai, Chennai-1.

3. The Deputy Commissioner of Customs Drawback, Chennai IV Customs House, 60, Rajaji Salai, Chennai-1. ...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records on the files of the 3rd respondent F.No.S.Misc.88/2009-DBK dated 15.11.2018, received on 20.11.2018 and quash the same as being without jurisdiction and arbitrary.

For Petitioner : Mr.V.Srikanth

For Respondents: Mrs.R.Hemalatha
standing counsel

O R D E R

The petitioner is aggrieved against the detention notice dated 15.11.2018 issued under Section 142 1(a)(b) of the Customs Act, 1962.

2. The case of the petitioner is as follows:

The petitioner-Company had exported Flexible Intermediate Bulk Container Bags (FIBC) in the capacity of manufacturer exporter and claimed 100% duty drawback on all Industry rates. During the disputed period, because of huge exports orders, the petitioner had sourced the above goods from another manufacturer and exported the same, under the claim of 100% duty drawback as merchant exporter on all Industry rates. Subsequent to the grant of drawback, the Preventive Unit Headquarters, Bangalore II Commissionerate has investigated the matter. Consequently, a show cause notice dated 02.11.2010 was issued on the petitioner to show cause against the demand and recovery of duty drawback along with interest under Rule 16 of the Customs, Central Excise Duties and Service Tax Drawback Rules 1995 read with Section 75A (2) of the Customs Act and also the proposed penalty. The petitioner submitted their objections in detail. The second respondent rejected the petitioners' objection and confirmed the proposal on the ground that the drawback was claimed in an irregular and fraudulent manner. The second respondent also imposed penalty. A common order was passed by the second respondent, demanding drawback amount from the petitioner and their sister concern and also imposing penalty on them. The petitioner filed an appeal before the first respondent. However, the appeal was dismissed on 16.03.2018. The order of the first respondent in dismissing the appeal, is not correct and it violates the principles of natural justice. The petitioner submitted a petition for rectification of mistake under Section 129B(2) of the Customs Act on 18.05.2018. The said petition was admitted and numbered before the first respondent. The said petition is still pending and posted for hearing on 31.01.2019. In the meantime, the impugned detention notice is issued alleging that the petitioner failed to pay the drawback amount and penalty.

3. The learned counsel for the petitioner after reiterating the above contention and also the grounds touching upon the merits of the matter, submitted that since the petition for rectification of mistake is, admittedly, pending before the first respondent, the impugned detention notice issued in the meantime, causes great hardship to the petitioner and therefore, the same cannot be sustained.

4. On the other hand, the learned standing counsel for the respondents admitted to the position that the rectification petition filed by the petitioner is posted for hearing on 31.01.2019 and therefore, he submitted that the merits of the order in original passed by the Adjudicating Authority, cannot be raised in this writ petition.

5. There is no dispute to the fact that the order of the Adjudicating Authority, which was confirmed in appeal has not reached its finality, as admittedly, the rectification petition filed by the petitioner is still pending before the first respondent and that the same is posted for hearing on 31.01.2019. Therefore, the order to be passed in the rectification petition will certainly have a bearing on the subject matter in issue and therefore, this Court is of the view that in all fairness, the respondents can await till an order is passed in the rectification petition. Accordingly, without expressing any view on the merits of the contention raised by the petitioner as against the order of adjudication, which is the subject matter of the rectification petition, this writ petition is disposed of, only by directing the respondents to keep the detention notice in abeyance, till the disposal of the rectification petition by the first respondent. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

mk
To

1. The Customs, Excise and Service Tax
   Appellate Tribunal, South Zonal Bench,
   26, Sashtri Bhavan Annexe Building,
   Haddows Road, Chennai-6.

2. The Commissioner of Customs (Sea-Export)
Custom House,
60, Rajaji Salai,
Chennai-1.

3. The Deputy Commissioner of Customs
Drawback, Chennai IV
Customs House, 60, Rajaji Salai,
Chennai-1.

+1cc to Mr.V.Srikanth, Advocate Sr.87787
+1cc to M/S.R.Hemalatha, Advocate Sr.87870

W.P.No.32753 of 2018

srg 20/12/2018