BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.06.2018
CORAM:
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P(MD)No.12571 of 2018
and
W.M.P(MD)No.11462 of 2018

M/s.Ganapathy Spinning Mills,
represented by its,
Managing Partner,
M.Santhakumar,
S.F.No.330, Murugasamy Gounder Thottam,
Manickapuram,
Palladam - 641 664.
Tirupur. ... Petitioner

Vs.

1.The Commissioner of Customs,
Custom House,
New Harbour Estate,
Tuticorin - 628 004.

2.The Customs & Central Excise Settlement Commission,
Additional Bench, II Floor,
Narmada Block,
Custom House,
No.60, Rajaji Salai,
Chennai - 600 001. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorari to call for the entire records of the first respondent leading to the issuance of the impugned Order-in-Original No.07/2018, dated 27.04.2018 in C.No.VIII/10/36/2017-Adjn., by the first respondent and quash the same.

For Petitioner : Mr.A.K.Jayaraj

For Respondents : Mr.R.Aravindan
******

ORDER

The petitioner is a manufacturer and exporter of cotton yarn. He applied for grant of Export Promotion Capital Goods (EPCG) Licence and fulfilled his obligations. However, the respondent Department found certain discrepancies and initiated investigation. Thereafter, a search was conducted in the petitioner's factory premises and certain imported machines were seized for obtaining Export Obligation Discharge Certificate (EODC) by submitting manipulated copies of shipping bills.

2. According to the petitioner, the discrepancy pointed out by the respondents is not within his knowledge and that is based on the statement made by the third parties. Consequent upon the investigation and discrepancies pointed out by the respondents, a sum of Rs.50,49,108/- was found to be not paid towards import duty. In October 2017, a show cause notice was issued by the first respondent to the petitioner calling for explanation as to why confiscation under Section 111(o) of the Customs Act, 1962 be made and penalty under Sections 112, 114 and also under Section 114-AA of the Customs Act, 1962, should not be imposed. The petitioner in response to the said show cause notice submitted his explanation dated 22.03.2018, wherein he has submitted that he may be given an opportunity to file an application before the Settlement Commission. The first respondent, by his reply dated 10.04.2018, granted ten days time to produce the evidence of filing the application before the Settlement Commission. But, the petitioner has sought for further time of 21 days to apply before the Settlement Commission, by his letter dated 23.04.2018. However, without granting any time to the petitioner to approach the Settlement Commission and without rejecting the request made by the petitioner, the first respondent passed the impugned Order in Original dated 27.04.2018. Aggrieved over the same, the petitioner is before this Court.

3. When the matter was posted for admission, the petitioner submitted that he would deposit the entire amount within 21 days and to show his bona fides, he has produced a Demand Draft for a sum of Rs.20,00,000/- and this Court, by order dated 13.06.2018, directed him to deposit and granted three months time for depositing the balance amount. Accordingly, the petitioner deposited a sum of Rs.20,00,000/- which was received by the respondents.

4. Now, on perusal of the impugned order, it is seen that it is passed on 27.04.2018 within four days from the date of receipt of the letter submitted by the petitioner seeking extension of 21 days. It is incumbent on the first respondent to consider the request of the petitioner for extension of time in one way or the other. The first respondent could have either accepted or rejected the request and communicated the same to the petitioner, but, without doing so, straight away passed the impugned Order in Original within four days from the date of receipt of the representation from the petitioner. Such an act is violative of principles of natural justice. Before taking any decision, an opportunity of personal hearing must have been afforded to the petitioner. The judgment of the Honourable Supreme Court in *Swamy Devi Dayal Hospital & Dental College v. The Union of India and others* reported in *2013 (10) SCALE 608*, mandates that personal hearing must be given before passing final orders. In the instant case, the first respondent has not adhered to the

mandatory principles of natural justice.

5. The learned Counsel for the petitioner would vehemently contend that he has made a request before the authority for settling the matter by depositing the entire amount before the Settlement Commission. He has further given assurance that he would approach the Settlement Commission and deposit the entire amount within four months. Accordingly, the learned Counsel for the petitioner undertakes to file a Memo to that effect before this Court.

6. The learned Counsel for the petitioner would also submit that he is suffering from cancer and there is a fire accident in the factory and he has suffered huge loss which incident precluded him from honouring his statement before the authorities. This Court has considered the facts which precluded the petitioner from satisfying his commitment.

7. Considering the same, four months' time is granted to the petitioner to approach the Settlement Commission and deposit the entire amount either in one lumpsum or in installments of which, the first installment has already been paid by the petitioner to the tune of Rs.20,00,000/- and the balance amount shall be paid within four months as assured by the petitioner, from the date of receipt of a copy of this order, failing which, it is open to the respondents to pass orders in accordance with law by following the procedures laid down.

8. Accordingly, I am inclined to set aside the impugned order passed by the first respondent in Order-in-Original No.07/2018, dated 27.04.2018 in C.No.VIII/10/36/2017-Adjn., and remand the matter back to the first respondent for fresh consideration.

9. With the above observations, this writ petition is disposed of. No costs. Consequently, the connected writ miscellaneous petition is closed.

Sd/
Assistant Registrar (CS-III)

/True copy/

Sub Assistant Registrar (CS-II)

To

1.The Commissioner of Customs,
Custom House,
New Harbour Estate,
Tuticorin - 628 004.

2.The Customs & Central Excise Settlement Commission,
Additional Bench, II Floor,
Narmada Block,
Custom House,
No.60, Rajaji Salai,
Chennai - 600 001.

+1cc to Mr.R.ARAVINDAN, Advocate, SR.No. 69510
+1cc to Mr.A.K.JAYARAJ, Advocate, SR.No. 69499

W.P(MD)No.12571 of 2018
and
W.M.P(MD)No.11462 of 2018
22.06.2018

RSB
KK/PN/SAR-2/24.07.2018/4P-5C/