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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 27.08.2018
CORAM
THE HONOURABLE MRS.JUSTICE J.NISHA BANU
W.P(MD).No.18236 of 2018

M/s.Royal Marketing,
rep. by its Proprietor T.Balaji,
Door No.1/242, Kamaraj Nagar,
Survey No.321/1B1, 301/2A,
Meelavittan (Melur),
Tuticorin. ... Petitioner

Vs.

1.The Superintendent,
Import Assessment Department,
Customs House,
Tuticorin.

2.The Additional Commissioner of Customs,
Customs House,
Tuticorin. ... Respondents

PRAYER:- Writ Petition has been filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the 1st respondent to herein to consider the representation of the petitioner, dated 18.07.2018, within a stipulated time.

For petitioner	:	Mr.S.Karunakar
For respondent	:	Mr.R.Aravindan, CGSC

ORDER

This writ petition has been filed by the petitioner for a Mandamus, to direct the 1st respondent to consider the petitioner's representation, dated 18.07.2018, within a stipulated time.

2.The brief facts of the case of the petitioner are as follows:

(a) The petitioner had imported 85.840 M.Ts. of Light Melting Scrap (LMS) from M/s.Greenbird SARL, Reunion, France through Tuticorin Port. The customs broker M/s.Srimathi Cargo, Tuticorin had filed a Bill of Entry on 23.07.2014, for clearance of 85.840 M.Ts. of LMS valid at Rs.17,53,476/- in five containers, which was, later on, sold on high sea sales basis to M/s.Vel Steels, who, in turn, sold the goods on high sea sales basis to the importer M/s.Sri Rengaraaj Steels, Karaikal. The goods were imported based on Pre-Inspection Certificate issued by the authorised ISO certified agency viz., M/s.Asia Globe Trade Ltd., Reunion, France.

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(b) As the materials were mixed with plastic waste, the

Officers of the Customs at Tuticorin referred the matter to the Pollution Control Authority. The officials of the Pollution Control Authority inspected the cargos and furnished the report in N.DEEET/TNPCB/TTN/Customs-3847/ General/2014, dated 07.08.2014, stating that the imported material is a metal scraps mixed with plastic canes, pet bottles and other non metallic waste. The petitioner had requested the authority to grant permission for segregation of plastic waste from LMS and agreed to re-export the plastic waste at their cost. However, the department seized the entire cargo and issued show cause notice for confiscation of the seized goods. The petitioner again requested the second respondent to release the goods. But, the second respondent, without considering the same, has passed the confiscation order and further directed for reexport of the entire cargo. Aggrieved by that order, the petitioner has filed an appeal before the Commissioner of Central Excise and Customs (Appeals), Tiruchirapalli. The said appeal was allowed and the matter was remanded back to the file of the second respondent to decide the case afresh with the following directions:

> "The report of the Pollution Control Authorities does not state that the plastic scrap mixed with the LMS is hazardous. They have only stated that "it is not useful for the intended purpose". The appellant has not been put to notice as to which provisions of the hazardous waste management rules have been violated. The report of the PCB also does not state the percentage of plastic scrap available in the consignment. Therefore, the case is remanded back to the LAA to categorically state which provisions of Hazardous Waste Management Rules have been violated, and whether the plastic scrap is actually hazardous in consultation with the Pollution Control Authority. If it is opined by the PCB that the plastic scrap is not hazardous and is capable of being segregated, the same may be segregated and re-exported on payment of fine and penalty as deemed fit. Import of LMS not being prohibited / restricted may be cleared without fine and penalty on payment of applicable duty, if segregation is possible. However, if segregation is not possible the LAA may permit re-export of the complete consignment on payment of appropriate fine and penalty. Needless to say the cost of reexport will be borne by the importer. In view of the above, the order of the LAA is set aside and directed him to decide the case afresh as discussed above."

(c) Immediately thereafter, the petitioner has sent a representation, dated 11.01.2017, requesting the second respondent to send a request to the Pollution Control authority to inspect the cargo once again and to get their opinion as to whether the plastic scraps found in minimal quantity can be segregated and to direct the Superintendent of Customs, SICAL CFS to examine the cargo after

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segregation of the plastic scrap from the LMS and to release the cargo as per the norms of the Customs Act. On receipt of the said representation, the second respondent has permitted the petitioner to segregate the said minimal quantity of plastic canes mixed with the LMS materials and accordingly, the segregated plastic scrap was stored in one container and the LMS materials were stored in remaining four containers and kept in the yard of M/s.Sical Multimodal and Rail Transport Limited, GFS Division, Tuticorin. On 08.05.2015, the second respondent has directed to reexport the plastic scrap at the cost of the petitioner and permitted the petitioner to clear segregated LMS on payment of applicable duties and interest. After receipt of the said order dated 08.05.2018, the petitioner repeatedly approached the first respondent for release of the four containers of imported LMS lying at M/s.Sical Multimodal and Rail Transport Limited for reexport. In this regard, he has also given a representation dated 18.07.2018. But, till date no action is taken by the first respondent and hence, the petitioner is before this Court.

3. The learned counsel appearing for the petitioner would submit that even after the order passed by the second respondent, the first respondent is not releasing the containers of imported LMS lying at M/s.Sical Multimodal and Rail Transport Limited, GFS Division, Tuticorin and the representation given by the petitioner dated 18.07.2018, in this regard, has also not been considered by the first respondent.

4. The learned counsel appearing for the respondents on instructions submitted that the first respondent will consider the representation of the petitioner dated 18.07.2018 as early as possible.

5. Heard the learned counsel for the petitioner and the learned counsel appearing for the respondents.

6. Considering the limited relief sought for by the petitioner, this Court, without going into the merits of the case, directs the first respondent to consider the representation of the petitioner, dated 18.07.2018, in the light of the order passed by the second respondent in Order-In-Origi9nal No.13/2018, dated 08.05.2018 and pass appropriate orders on merits and in accordance with law within a period of one week from the date of receipt of a copy of this order.

7. This Writ Petition stands disposed of accordingly. No costs.

Sd/-
Assistant Registrar (AE)

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Sub Assistant Registrar (CS-II)

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To

1.The Superintendent,
Import Assessment Department,
Customs House,
Tuticorin.

2.The Additional Commissioner of Customs,
Customs House,
Tuticorin.

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