

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.07.2019

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.Nos.11860 and 18792 of 2008
and M.P.Nos.1,1 and 2 of 2008

W.P.No.11860 of 2008

M/s.Flemingo Duty Free Shop Private Ltd.,
C-25, Guindy Industrial Estate,
Guindy, Chennai- 600 032.
represented by Ms.Vijayakumari Ravi ... Petitioner

Vs.

1.The Assistant Commissioner of Customs,
Bonds-(AIR),
Office of the Commissioner of Customs
(AIRPORT),
Integrated Cargo Complex,
Meenambakkam, Chennai-600 027.

2.The Chief Commissioner of Customs,
Custom House, No.39, Rajaji Salai,
Chennai- 600 001. ... Respondents

Prayer:- Writ Petition filed under Article 226 of the
Constitution of India, to issue a Writ of Certiorari calling for
the records of the first respondent ending with F.No.S4/19/2004-
Bonds (AIR) - P 019 (part file) dated 29.03.2008 and quash the
same.

W.P.No.18792 of 2008

M/s.Flemingo Duty Free Shop Private Ltd.,
C-25, Guindy Industrial Estate,
Guindy, Chennai- 600 032.
represented by its General Manager,
R.Murali ... Petitioner

Vs.

1.The Assistant Commissioner of Customs, (ACIU),
Office of the Commissioner of Customs
(AIRPORT), Integrated Cargo Complex,
Meenambakkam,
Chennai-600 027.

2.The Chief Commissioner of Customs,
Custom House,
No.39, Rajaji Salai,
Chennai- 600 001.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari call for the records of the First respondent ending with S.Misc.48/08-ACIU dated 17.07.2008 and quash the same.

For Petitioner :Mr.C.Manishankhar
Senior Counsel
for Mr.K.Krishnamoorthy

For R1 and R2 :Mr.G.M.Syed Nurullah Sheriff
Senior Standing Counsel
(in both writ petitions)

COMMON ORDER

The short ground that arises for consideration in the present writ petitions is that when the impugned orders dated 29.03.2008 and 17.07.2008 were made, directing the petitioners herein to remit the duty of Rs.4,59,801/- and Rs.20,55,629/- respectively, along with the interest, no prior opportunity was given to the writ petitioners for put forth their objections.

2.It is stated by the learned Senior Counsel appearing for the petitioners that from 26.02.2007 onwards, they had been giving representations, requesting the respondents herein to inspect the cargo and give the duty remission. The impugned order has neither made any reference to any such objections nor has assigned any reasons for non-consideration of such objections. As a matter of fact, the impugned orders also do not substantiate as to why the petitioners are bound to remit the duty.

3.The learned Standing Counsel for the respondents would object to the petitioner's submission stating that under the provisions of the Customs Act, the petitioner is bound to remit the duty and that there were no infirmity in the order.

4.This Court is of the view that if the respondents are of the opinion that the petitioners are duty bound to remit the duty, such decision can be made only after giving due consideration to the objections raised by the petitioners and that non-consideration of any such objections will amount to violation of the principles of natural justice, apart from being termed as a non speaking order.

5.In the light of the above observations, the impugned orders in F.No. S4/19/2004 - Bonds(AIR)-P019 (part file) dated 29.03.2008 and S.Misc.48/08-ACIU dated 13.07.2008 are set aside, with liberty to the respondents to issue a fresh show cause notice. The respondents shall extend the benefit of personal hearing to the petitioners during the course of consideration of their objections and decide the matter in accordance with law.

6.With these observations, these writ petitions are disposed of. No costs. Consequently, connected miscellaneous petition are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The Assistant Commissioner of Customs, (ACIU)/Bonds-(AIR),
Office of the Commissioner of Customs
(AIRPORT),
Integrated Cargo Complex,
Meenambakkam,
Chennai-600 027.
- 2.The Chief Commissioner of Customs,
Custom House,
No.39, Rajaji Salai,
Chennai- 600 001.

+1 cc to M/s.G.M.Syed Nurullah Sheriff,Advocate Sr.No. 64727
+1 cc to Mr.C.Mani Shankar, Advocate SR.No.65406

AKM/13.09.19/3P-5C /

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