IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 04.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

WP.No.15671 of 2003

India Rosin Industries,
New No.5, Old No.3,
Post Office Street,
Chennai 600 001.
Rep. By its partner Mr.Anuj Sood ... Petitioner

Vs

1.The Commissioner of Customs (Sea),
'Custom House', 33, Rajaji Salai,
Chennai-600 001.

2.The Deputy Commissioner of Customs (DEPB),
'Custom House',33, Rajaji Salai,
Chennai-600 001. ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to impugned Order-in-Original No.546/03 dated 06.05.2003 passed by the 2nd Respondent and quash the same as illegal and direct the Respondents to classify the goods Oleo Pine Resin under the Customs Tariff Heading 1301.90.

For Petitioner : Mr.S.S.Radhakrishnan

For Respondents: Mr.K.Magesh,
Senior panel counsel

O R D E R

The present Writ Petition is filed against the impugned Order-in-Original No.546/03 dated 06.05.2003 passed by the 2nd Respondent , finalising the provisional assessment made and by levying an Additional Duty of Customs @16%.

2.Customs Tariff Heading 1301.90 of the Central Excise Traiff Act, 1975 provides for levy of Customs Duty @ 16% for the present subject product namely 'Oleo Pine Resin'. The second respondent herein had issued a show cause notice dated 25.03.2003, calling upon the petitioner to show cause as to why Custom Duty of 16 % should not be levied and the provisional assessment finalised. The Writ petitioner had given a reply dated 29.04.2003 and not being satisfied with the explanation given, the impugned Order-in-Original came to be passed by the second respondent on 06.05.2003.

3.The learned counsel for the petitioner submitted that in the earlier consignment, when a similar objection was raised by the respondent herein demanding Customs Duty for the product manufactured through manual process, the same came to be challenged before the Commissioner of Customs (Appeal), Chennai. By an order inAppeal dated 12.06.1998, it was held that pine resin, being a natural product, cannot be considered to be manufactured with the help of power and therefore held that the classification of the product would fall under sub headings No.1301.90 of the CET Act and had 'Nil' rate of duty and thereby setting aside the assessment and levy of additional customs duty. When the order inappeal came to be challenged before the Customs, Excise and Gold (Control) Appellate Tribunal by an order dated 01.02.1999, the Revenue Appeal came to be rejected, by observing that the Commissioner has considered the certificates produced by the suppliers, which had been ignored by the Assistant Commissioner. It was further held that the item had been manufactured without use of power and therefore the classification of the product arrived at 1301.90 by the Commissioner (Appeals) cannot be faulted and was sufficient for exemption of payment of Customs Duty. The learned counsel further submitted that subsequently, the department had issued a circular dated 31.03.2004, whereby, it has been held that a declaration and certificate from the Chamber of Commerce or the Government agency of the supplying country to the effect that the product has been produced/extracted without use of power, can be accepted.

4.Even otherwise, the learned counsel would submit that the impugned Order-in-Original has relied upon the verdict of the Customs, Excise and Gold (Control) Appellate Tribunal, in a case which has no relevance to the present case in hand.

5.The learned Standing Counsel for the respondents submitted that in view of the Section 128 of Customs Act an Appeal remedy is available against the impugned order in original and hence the Writ Petition is liable to be dismissed for not availing the alternate remedy. The learned Standing Counsel further submitted that earlier the petitioner herein had challenged the show cause notice issued by the second respondent before this Court in W.P.No.11703 of 2003, the same came to be disposed of by a direction to consider with a liberty to give his reply. When the

High Court had also refused to entertain the writ petition, on the ground that an alternative remedy of giving a reply, the Writ Petition is liable to rejected since an appeal remedy is available.

6.I have given careful consideration to the submissions made by the respective Counsels.

7.The position, as it stands today is that in view of circular No.26/2004-Cus, 31.03.2004, a certificate from the Chamber of Commerce or a Government Agency of the supplying country to the effect that the product has been produced/extracted without the use of power, can be accepted for the purpose of exemption of customs duty under heading of 1301.10 of the Central Excise Tariff Act. The said circular is based on an earlier decision of the CEGAT, wherein the exemption has been allowed on the basis of a simple declaration by the supplier, which decision has become final.

8.As pointed out by the learned counsel for the petitioner, when a similar demand was raised by the respondent herein to the petitioner with regard to the levy of Customs Duty on the same product, the CEGAT, through its final order dated 01.02.1999, had held that a certificate of the supplier is acceptable for the purpose of granting exemption of payment of 16% customs duty.

9.It is seen in the present case that the petitioner had produced a certificate dated 11.02.2003, issued by the Forest Department of the Sri Lankan Government, evidencing that the product was extracted manually and there was no aid of power. This certificate has not been considered by the second respondent in the impugned order by either disbelieving the same or questioning its validity.

10.Since the CEGAT had earlier held that a simple declaration evidencing that the product was manufactured without the aid of power would suffice for the purpose of grants exemption from payment of customs duty, there is no justification on the part of the second respondent herein to hold otherwise in the present impugned order. As such, the respondents are not justified in rejecting the declaration given or the certificate issued by the Government Agency of the Supplying Country, which would be sufficient for the purpose of the exemption, in view of the circular dated 31.03.2004.

11.The learned Standing counsel for the respondents submitted that in view of the alternate remedy, the present writ petition is liable to be dismissed. I am unable to agree with such a submission made. Even assuming that the petitioner is directed to prefer an appeal against the impugned order, no useful purpose would be served, in view of the department's circular dated 31.03.2004. As such, the appeal remedy, if directed to be exercised at this stage, would be a futile exercise.

12. For all foregoing reasons, I do not find any justification in the Order-in-Original No.546/03 dated 06.05.2003 passed by the 2nd Respondent. Accordingly, the Order-in-Original No.546/03 dated 06.05.2003, is quashed and the Writ Petition stands allowed. No costs.

Sd/-
Deputy Registrar(J)

//True Copy//

Sub Assistant Registrar

jrs/vum

To

1.The Commissioner of Customs (Sea),
'Custom House', 33, Rajaji Salai,
Chennai-600 001.

2.The Deputy Commissioner of Customs (DEPB),
'Custom House',33, Rajaji Salai,
Chennai-600 001.

+1 cc to Mr.K.Magesh, Advocate Sr.No.32565
+1 cc to Mr.Hari Radhakrishnan, Advocate Sr.No.34182

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CSL/18.06.2019