IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 07..11..2019

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Writ Petition No.17620 of 2008
and M.P.No.1 of 2008

M/s.Morgan Industries Limited,
No.109, M.G.Road,
Nungambakkam, Chennai 600034
Rep. by its Executive Director,
Authorized Signatory V.Venkatraman
... Petitioner

-Versus-

1.The Additional Director General of Foreign Trade (ECA),
Office of the Director General of Foreign Trade,
Room No.9, 1st Floor, Udyog Bhavan,
New Delhi 110 001.

2.The Zonal Joint Director General of Foreign Trade,
Office of the Zonal Joint Director General of Foreign Trade,
Shastri Bhavan, Annexe, 4th & 5th Floor,
No.26, Haddows Road, Chennai 600 006.

3.The Foreign Trade Development Officer,
Office of the Zonal Joint Director of Foreign Trade,
Shastri Bhavan, Annexe 4th and 5th Floor,
No.26, Haddows Road,
Chennai 600 006. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for records of the 3rd respondent relating to file No.I(139)/DQR/2004-2005/ECA/Che/25 dated 22.05.2008 and to quash the same.

For Petitioner : Mr.V.Santharam

For Respondent(s) : Mr.Madhanagopal Rao,
SCGSC for RR1 to 3

ORDER

This writ petition has been filed challenging the order passed by the 3rd respondent / original authority directing the petitioner to pay a penalty of Rs.3,62,350/- .

2. Earlier, the 3rd respondent had passed an order of adjudication in the year 2007 imposing a penalty of Rs.3,62,350/- and a personal penalty of Rs.10,000/- for not fulfilling the the export obligations. Challenging the same, the petitioner filed appeal before the 2nd respondent / appellate authority, who, in turn, while upholding the order of adjudication, remitted the matter back to the original authority to reconcile the customs duty plus interest and to recover the same. Pursuant to the same, the impugned order has been passed by the 3rd respondent once again imposing penalty of Rs.3,62,350/- . It is this order which is now challenged in the instant writ petition.

3. The learned counsel appearing for the petitioner would contend that the total excess import was worked out to 5297 KGS for which customs duty involved is only Rs.1,23,210/-. The bank guarantee furnished by the petitioner had already been invoked by the customs authority towards customs duty to tune of Rs.70,251/- thereby leaving the balance duty amount of Rs.52,959/-. Therefore, the appellant authority had held that the imposition of fiscal penalty of Rs.3,62,350/- and personal penalty of Rs.10,000/- was not valid, therefore, while upholding the adjudication order, directed the original authority to reconcile the customs duty and interest and thereafter to initiate appropriate proceedings for recovery. But, the original authority without considering the scope of the order of remanding, has once again imposed a penalty of Rs.3,62,350/- in total non application of mind.

4. Per contra, the learned counsel appearing for the respondents would contend that the impugned order has been passed by the original authority after having reconciled the customs duty in inconsonance with the direction of the appellant authority.

5. I have considered the rival submissions carefully.

6. Originally, the 3rd respondent had passed an order against the petitioner imposing a penalty of Rs.3,62,350/- and personal penalty of Rs.10,000/-. When the above order was challenged by way of appeal, the 1st respondent / appellate authority, though upheld the adjudication order, remitted the matter back to the 3rd respondent to reconcile the customs duty plus interest and to recover the same. The operative portion of the order of the appellate authority reads as follows:-

> "7. I, therefore, in exercise of the powers vested in me under Section 15 of the FT (D&R) Act, 1992 pass the following Order:-
>
> (i) Adjudication Order / Cancellation Order No.(139) ECA/CHE/AM05/ADJ/Dated 4.2007 (No.2)

passed by Jt. DGFT, Chennai is upheld.

(ii) Remand back to JT. DGFT, Chennai to reconcile the customs duty + interest and to recover the same."

7. Now, on remand, the 3rd respondent, without considering the scope of the order of remand and without giving any opportunity what so ever to the petitioner, has passed the impugned order once again imposing a fiscal penalty of Rs.3,62,350/- . A perusal of the impugned order would go to show that the 3rd respondent did not at all consider the order of remand in proper perspective. That apart, before passing the impugned order, the 3rd respondent ought to have been given an opportunity of hearing to the petitioner. Thus, this court is of the view that the impugned order is liable to be set aside and remitted back to the 3rd respondent for fresh consideration as per the order passed by the appellate authority.

8. In the result, this Writ Petition is allowed and the impugned order passed by the 3rd respondent is set aside and the matter is remitted again to the 3rd respondent for reconsideration. The 3rd respondent is directed to reconcile the customs duty plus interest as per the order passed by the 1st respondent after giving an opportunity to the petitioner and thereafter pass an appropriate order for recovery, if it is necessary. The above said exercise shall be completed within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, connected MP is closed.

Sd/-

Assistant Registrar (CS-I)

//True Copy//

Sub Assistant Registrar

kmk

To

1.The Additional Director General of Foreign
Trade (ECA),
Office of the Director General of Foreign Trade,
Room No.9, 1st Floor, Udyog Bhavan,
New Delhi 110 001.

2.The Zonal Joint Director General of Foreign Trade,
Office of the Zonal Joint Director General of Foreign Trade,
Shastri Bhavan, Annexe, 4th & 5th Floor,
No.26, Haddows Road, Chennai 600 006.

3.The Foreign Trade Development Officer,'
Office of the Zonal Joint Director of Foreign Trade,
Shastri Bhavan, Annexe 4th and 5th Floor,
No.26, Haddows Road, Chennai 600 006.

+1cc to Mr.B.Satish Sundar, Advocate, S.R.No. 92544

Writ Petition No.17620 of 2008

AK(CO)
GN(11/02/2020)