IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.09.2019

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THE HONOURABLE Dr.JUSTICE ANITA SUMANTH

W.P.No.25328 & 25329 of 2009
M.P.No.1 & 1 of 2009

1. M/s.K.K.Enterprises
   Rep.by it Partner:
   Mr.Vinod Kothari
   ...Petitioner in W.P.No.25328 of 2009

2. Vijay Kothari,
   Partner,
   M/s.K.K.Enterprises
   ...Petitioner in W.P.No.25329 of 2009

Vs.

1. The Union of India,
   By Secretary to Govt,
   Ministry of Finance, Dept. of Revenue,
   New Delhi

2. The Commissioner of Customs (Sea Port)
   Customs House,
   Rajaji Salai, Chennai.

3. The Deputy Commissioner of Customs,
   Gr.7A, DEPB, Customs House,
   Rajaji Salai, Chennai

4. The Commissioner of Customs & Central Excise,
   ICE House, EDC Complex,
   Patto Plaza,
   Goa ...Respondents in both WPs

Common Prayer:-

Writ Petitions filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records relating to the order passed by the 4th respondent in Order.Nos.14/ Commissioner/ GOA/CUS/09 (F.Nos.S/ 99/ 178/ 07-Appg/ 5982 & 5983) dated 07.09.2009 and quash the same.

For Petitioner in both WPs	:	Mr.M.A.Mudivannan for Mr.K.Jayachandran
For Respondent in both WPs	:	Mr.S.Rajasekar Standing Counsel

COMMON ORDER

The petitioner challenges order-in-original dated 07.09.2009, passed by the Commissioner of Customs, Central Excise & Service Tax.

2. Though other grounds have been raised in the writ petition assailing the impugned order, the sole ground canvassed before me is that of violation of principles of natural justice.

3. The admitted facts are that the documents relied upon by the adjudicating authority in show cause notice 01.02.2007 have been furnished to the petitioner in January 2008. Thereafter, a notice of hearing has been issued fixing the adjudication/personal hearing on 10.06.2008. The counsel engaged in the matter filed a request dated 05.06.2008, for adjournment, on the ground that the senior counsel engaged in the matter was proceeding abroad on vacation. The petitioner has also filed a communication dated 10.06.2008, bringing to the notice of the Assessing Officer that the venue of the hearing fixed on 10.06.2008, was changed from one office to another and intimation in this regard dated 04.06.2008, was itself received by the petitioner only on the date of hearing. The petitioner reiterated in its letter aforesaid, the request for adjournment, filed by its counsel.

4. After a period of one year and three months, on 07.09.2009, the respondent proceeds to pass the impugned order. The request for adjournment of the counsel on 05.06.2008 has been noted at paragraph 114. Obviously he has proceeded to ignore/reject the request. However the fact that he proposes to reject the request, has neither been conveyed to the petitioner nor the counsel engaged. In such a circumstances, and in all likelihood the petitioner/its counsel were both led to believe that the request for adjournment has been accepted. Moreover, the elapse of time between 05.06.2008, when the counsel requested an adjournment to when the order was actually passed on 07.09.2009, certainly warrants notice of hearing to have been issued afresh in the matter.

5.The counter filed by the respondent does not dispute the aforesaid sequence of facts but only states that, in the opinion of the respondent, an opportunity for either cross-examination, as sought for by the assessee, or for a hearing, is not mandatory. I am unable to accept this contention, as a personal hearing during the conduct of adjudication, particularly when specifically sought for, is in line with the principles of natural justice, and ought to have been granted. In my considered view there has been a breach of the principle of natural justice in the matter and I thus, have no hesitation in setting aside the impugned order.

6. The petitioner will appear before the 4th respondent/Assessing Officer on 18.09.2019 at 10.30 A.M. along with all documents in support of its stand. No notice need be issued in this regard. It is made clear that if there is no attendance by the petitioner on the said date, the impugned order of assessment will stand reiterated. After hearing the petitioner and considering all/any documents that may be filed by the petitioner in support of its contentions, an order of assessment, de novo, shall be passed by the Assessing Authority on or before 31.10.2019.

7. This writ petition is allowed. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Govt. of India,
   Ministry of Finance, Dept. of Revenue,
   New Delhi

2. The Commissioner of Customs (Sea Port)
   Customs House,
   Rajaji Salai, Chennai.

3. The Deputy Commissioner of Customs,
   Gr.7A, DEPB, Customs House,
   Rajaji Salai, Chennai

4. The Commissioner of Customs & Central Excise,
ICE House, EDC Complex,
Patto Plaza, Goa.

+1cc to Mr.K.Jayachandran, Advocate, S.R.No.77227
+2cc to Mr.S.Rajasekar, Advocate, S.R.No.77467 & 77468

W.P.No.25328 & 25329 of 2009
M.P.No.1 & 1 of 2009

RJI(CO)
CS/12/09/2019