

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.06.2019

Coram

THE HONOURABLE MR. JUSTICE M.SUNDAR

W.P.No.15369 of 2019

M/s.Fortune Marketing Private Limited,
Represented by its Branch Head, Mr.Amit Gupta,
No.6, 7, Ground Floor, ABC Trade Centre,
New No.39/ Old No.50,
Anna Salai, Chennai - 600 002.

..

Petitioner

vs.

1. The Assistant Commissioner of Customs (Refunds-II)
Custom House, 60 Rajaji Salai,
Chennai - 600 001.

2. The Additional Commissioner of Customs (Group 7H)
Custom House, 60 Rajaji Salai,
Chennai - 600 001.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, call for the records pertaining to the impugned order dated 22.03.2019 passed by the 1st respondent in F.No.SR-1935/2017 refunds and quash the same and further direct the 1st respondent to sanction the refund as claimed by the petitioner in their refund claim dated 02.05.2017 along with applicable interest and pass such further other orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and thus render justice.

For Petitioner : Mr. Hari Radhakrishnan

For Respondent : Mr.Pramodkumar Chopda
Senior Standing Counsel for CBIC

ORDER

Mr.Hari Radhakrishnan, learned counsel on record for writ petitioner is before this Court. Mr.Pramodkumar Chopda, learned Senior Standing counsel accepts notice on behalf of both the respondents. To be noted, both the respondents are official respondents.

2. This writ petition is listed in the motion list under the caption 'FOR ADMISSION' today (10.06.2019). Be that as it may,

with the consent of learned counsel on both sides i.e., learned counsel for writ petitioner as well as learned Standing counsel for respondents i.e., both the respondents, the main writ petition itself is taken up, heard out and is being disposed of.

3. The entire writ petition turns on a very narrow compass.

4. Goods which are described as 'Fingerprint Readers' is the subject matter of the writ petition. The same shall be referred to as 'said goods' for the sake of brevity, convenience and clarity. According to the writ petitioner, said goods are eligible for benefit of exemption from basic customs duty in terms of Sl.No.408A PF Notification No.12/2012 -Customs dated 17.03.2012. In the light of the order, which this Court proposes to pass now, this Court does not express any opinion on this plea of the writ petitioner.

5. A perusal of the impugned order made by the first respondent reveals that it is cryptic and it is made up of two sentences. However, what is of greater importance is vide the impugned order, the first respondent has rejected the refund plea of the writ petitioner qua said goods. The application for refund made by the writ petitioner has been placed before this Court as part of the case file. Writ petitioner's refund application is in a prescribed template application form. Column 12 of the refund application and writ petitioner applicant's response to the same read as follows:

'12. Whether personal hearing :
Yes
required or not before the case
is decided'

6. As mentioned supra, the aforesaid refund application is in the prescribed form and there is no dispute or disagreement before this Court on this aspect of the matter. From the refund application which is in prescribed form, it comes to light that there is a provision of personal hearing and the writ petitioner has opted for personal hearing or in other words, the writ petitioner sought for personal hearing by answering in the affirmative to the query (vide column 12 in the prescribed form) as to whether personal hearing is required.

7. Notwithstanding the aforesaid position, there is no mention about the personal hearing in the impugned order. There is nothing before this Court to demonstrate that an opportunity of personal hearing was afforded to the writ petitioner. Learned counsel for writ petitioner, on instructions, asserts that no personal hearing can be granted to the petitioner. This is recorded.

8. Therefore, this case falls under the category of violation of 'Natural Justice Principles' (NJP).

9. This warrants an interference in writ jurisdiction.

10. In the light of the trajectory, which this writ petition has taken toady in the hearing and in the light of the narrative thus far, this Court passes the following order:

a) Impugned order dated 22.03.2019 bearing reference No.F.No.1935/2017-REFUNDS made by the first respondent is set aside.

b) First respondent is directed to process the refund application of the writ petitioner dated 02.05.2017 in a manner known to law, more particularly, after affording an opportunity of personal hearing to the writ petitioner.

c) After affording an opportunity of personal hearing to the writ petitioner, the aforesaid refund application of the writ petitioner dated 02.05.2017 shall be disposed of in a manner known to law.

d) Aforesaid exercise of processing the refund application and disposing of the same in accordance with law shall be completed within a period of four (4) weeks from the date of receipt of a copy of this order.

e). The decision taken by the first respondent on the refund application shall be communicated to the writ petitioner under due acknowledgement within 7 working days from the date of the order to be made by the first respondent.

11. Writ petition is disposed of on above terms. There shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Assistant Commissioner of Customs (Refunds-II)
Custom House, 60 Rajaji Salai,
Chennai - 600 001.
2. The Additional Commissioner of Customs (Group 7H)
Custom House, 60 Rajaji Salai,
Chennai - 600 001.

+1cc to Mr.Pramodkumar Chopda, Advocate sr.47721

+1cc to Mr. Hari Radhakrishnan, advocate sr.47110

W.P.No.15369 of 2019

vsnii(co)
nr 17/07/2019



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