IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.07.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S.RAMESH

W.P.No.8543 of 2014
and
M.P.No.1 of 2014

International Flavors & Fragrances India Pvt. Ltd.,
Represented by Sridhar Balakrishnan
1-5, Seven Wells Street, St.Thomas Mount,
Chennai - 600016. ...Petitioner

Vs.

Additional Commissioner of Customs (Group II),
Office of the Commissioner of Customs (Seaport),
Customs House,
No.60, Rajaji Salai,
Chennai - 600001. ...Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records in F.No.S30/158/2011-Gr.2 dated 16.01.2014 in Job No.24618/2014 in Order-in-Original No.23473/2014 dated 16.01.2014, issued by the respondent and quash the same as arbitrary and illegal.

For Petitioner : Mr.Joseph Prabakar

For Respondent : Mr.A.P.Srinivas
Senior Standing Counsel

O R D E R

Challenging the Order-in-Original, the learned counsel for the petitioner placed his submission on two folds. Firstly, he would submit that the order is a non-speaking order and secondly that the order is liable to be set aside on the ground of laches, since it was belatedly disposed without adhering to the time limit stipulated in the Circular of the Department.

2. The learned Senior Standing Counsel appearing for the respondent, on the other hand, would submit that the reasoning have been given in the impugned order for the specific description of pepper and as such, it cannot be termed as a non-

speaking order. Likewise, he would also submit that the Circular is not mandatory in nature and is only directory and therefore, the impugned order need not be set aside on that ground.

1. I have given careful consideration to the submissions made by the respective counsel.
2.

4. The case of the petitioner is that as per the four Bills of Entry, the importer has classified natural pepper under Tariff item 33021010 in two Bills of Entry and Tariff item 33021090 in the other two Bills of Entry. Since the respondent had not given the reasoning as to why these tariff items will not be applicable to the description of their product has not been specified in the impugned order, it would amount to a non-speaking order.

5. It is no doubt true that the respondent had chosen to rely on Rule 2B of the General Rules by interpretation of the first schedule of Customs Tariff Act, 1975 and applied the tariff item for the most specific description of pepper. Such a reasoning cannot be usually found fault with.

6. Nevertheless, when the Bills of Entry specifies a tariff item, it would be appropriate for the respondent to have discussed as to why these tariff items are not applicable to the petitioner's product. On this ground, it can be said that the impugned order is bereft of reasoning and therefore, requires reconsideration.

7. Insofar as the delay in disposing of the proceedings are concerned, the Circular issued by the respondent in Circular No.732/48/2003-CX., dated 05.08.2003 specifies that cases where personal hearing has been concluded, the decision requires to be communicated at the most within one month therefrom. In the instant case, the impugned order came to be passed after more than two years from the date when the personal hearing had concluded. Though, the Circulars of the Department may not be mandatory to be complied with, the respondent atleast should have justified the reason for such belated disposal of the case after the personal hearing. On this score also, the order is liable to be set aside.

8. In the light of the above observations, the impugned order dated 16.01.2014 is set aside and the matter is remanded back to the respondent herein, for reconsideration, after giving due opportunity of personal hearing to the petitioner. While concluding the said proceedings, the respondent shall pass a speaking order, in accordance with law, atleast within thirty days from the date of conclusion of the personal hearing.

9. With the above observations, the Writ Petition stands disposed of. Consequently, the connected miscellaneous petition is closed. No costs.

10. At this juncture, it is brought to the notice of this Court that in pursuance to the impugned order dated 24.03.2014 made in this writ petition, the petitioner had deposited 25% of the demand claimed. It is made clear that such a deposit shall be subject to the outcome of the decision to be taken by the respondent, pursuant to the directions of this Court.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

Additional Commissioner of Customs (Group II),
Office of the Commissioner of Customs (Seaport),
Customs House,
No.60, Rajaji Salai,
Chennai - 600001.

+1cc to Mr.Joseph Prabakar, Advocate sr.65802
+1cc to Mr.A.P.Srinivas, SSC sr.65074

W.P.No.8543 of 2014
and
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nr 26/09/2019