

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2019

CORAM:

THE HON'BLE DR. JUSTICE VINEET KOTHARI
and
THE HON'BLE MR. JUSTICE R.SURESH KUMAR

C.M.A.No.4774 of 2019

M/s.V.K.Industrial Corporation Ltd
No.304/304, Loha Bhavan
93, P.D.Mellor Road, Carnac Bunder
Mumbai, Maharashtra 400 009. .. Appellant

..Vs..

The Commissioner of Customs (Sea)
Chennai III Commissionerate SIIB
Customs House, No.60, Rajaji Salai
Chennai 600 001. .. Respondent

Prayer : Civil Miscellaneous Appeal is filed under Section 130 of the Customs Act, 1962, against the Misc.Order No.40452/2019 dated 23.09.2019 in Misc.Application No.C/MISC/40222/2019 in Appeal No.C/40785/2019-DB passed by the Hon'ble CESTAT.

For Appellant : Mr.Hari Radhakrishnan
For Respondent : Mr.M.Santhanaraman
Sr.Standing Counsel (Customs)

J U D G M E N T

(Judgment of the Court was delivered by DR.VINEET KOTHARI, J.)

The Assessee M/s.V.K.Industrial Corporation Limited is aggrieved by the interlocutory order by the CESTAT, South Zonal Bench, Chennai rejecting the prayer of the Assessee seeking a Test Report in respect of the sample of goods imported by the Assessee.

2. The short order passed by the learned Tribunal is quoted below for ready reference.

"The applicant has filed this miscellaneous application, seeking for necessary direction to the adjudicating authority in testing of samples of the

disputed goods in a particular manner. On a query from the Bench relating to relevant provisions of law, which empowers Tribunal to deal with such a situation, the explanation furnished by the learned advocate for the applicant was not satisfactory. Accordingly, the miscellaneous application filed by the applicant is dismissed."

3. Learned counsel for the Assessee Mr. Hari Radhakrishnan submitted that a similar request was made before the adjudicating authority, but the same was also not allowed by the learned adjudicating authority and the Test Report furnished by the Assessee itself was also brushed aside without any reason or discussion thereon. He further submitted that the Steel Plates coated with Zinc Silicate imported by the Assessee were not liable to Anti-Dumping Duty, whereas the learned adjudicating authority had held that the goods were only painted with Zinc and not coated with Zinc Silicate and therefore Anti-Dumping Duty was payable by the petitioner.

4. Be that as it may. We are not inclined to go into the merits of the submissions made by the learned counsel for the Assessee. However, we feel that the cryptic order by the learned Tribunal rejecting the prayer of the Assessee was unjustified. An evidence in this regard was led by the Assessee before the adjudicating authority in the form of a Test Report and upon its negation, the Assessee simply wanted a direction to the authority to secure a Test Report from another Government Laboratory or accredited Laboratory so that the evidence of the Assessee can be weighed against that. The powers of a Civil Court are vested with the Tribunal as well and in any case the Tribunal being the fact finding authority, has co-extensive powers with that of the adjudicating authority. Refusal of the Assessee's application to summon such a Test Report merely because the counsel failed to point out the relevant provisions of law was not justified.

5. Therefore, we are inclined to allow this Appeal and set aside the order of the learned Tribunal dated 23.09.2019 in Misc.Application No.C/MISC/40222/2019 in Appeal No.C/40785/2019-DB and request the learned Tribunal to pass fresh orders in the Miscellaneous Application, after affording an opportunity of hearing to both the parties.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

KST

To

1. CESTAT, South Zonal Bench, Chennai
2. The Commissioner of Customs (Sea)
Chennai III Commissionerate SIIB
Customs House, No.60, Rajaji Salai
Chennai 600 001.

+1cc to Mr.Hari Radhakrishnan , Advocate SR.No. 105542

+1cc to Mr.Santhanaraman , Advocate SR.No. 105914

C.M.A.No.4774 of 2019

A.SK (03/02/2020)



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