BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **30.04.2019**

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.(MD).No.11063 of 2019
and
W.M.P.(MD) No.8427 of 2019

M/s.Green Port Shipping Agencies,
(Represented by its Partner Mrs.S.Avudaiammal),
No.26 E/7A, Kamaraj Nagar,
Tuticorin - 628 008. ... Petitioner

-vs-

1.The Commissioner of Customs,
Custom House,
New Harbour Estate,
Tuticorin - 628 004.
2.The Superintendent of Customs (Adjudication),
Office of the Commissioner of Customs,
Customs House,
Tuticorin - 628 004. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari Mandamus, calling for the records of the impugned letter No.C. No.VIII/10/69/2011 - Adjn dated 11.04.2019 on the file of the first respondent and quash the same, consequently direct the first respondent to pass appropriate orders on Petitioner's representation dated 13.03.2019.

For Petitioner : Mr.R.Vinoth Bharathi
For Respondents : Mr.R.Aravinthan
Standing Counsel

O R D E R

The instant writ petition has been filed challenging the impugned letter dated 11.04.2019, sent by the first respondent rejecting the representation given by the petitioner, seeking for inspection of the documents based on which Show Cause Notice was issued by the first respondent under Section 124 of the Customs Act, 1962.

2.It is the case of the petitioner that the subject consignments for which a Show Cause Notice was issued by the first respondent under Section 124 of the Customs Act, 1962 were not imported by them, even though the bill of lading mentioned their name as the notify party. Therefore, by their representation dated 08.04.2019, they had asked for inspection of documents mentioned in the Show Cause Notice under Section 124 of the Customs Act, 1962. But, according to them, under the impugned letter, the first respondent rejected the request of the petitioner for inspection of the documents. Aggrieved by the same, the instant Writ Petition has been filed.

3.Heard Mr.R.Vinoth Bharathi, learned counsel for the petitioner and Mr.R.Aravindan, learned Standing Counsel, who accepts notice for the respondents.

4.Admittedly, no final orders have been passed by the first respondent pursuant to the Show Cause Notice issued by him to the petitioner under Section 124 of the Customs Act, 1962. But on receipt of the Show Cause Notice, the petitioner has given a representation on 08.04.2019, requesting the first respondent to give permission to inspect the Import General Manifest, alleged to have been filed by the petitioner, while importing the subject goods. According to the petitioner, it is their case that they never imported the subject consignments and they were not connected with the said import. It is also their case that no bill of entry was filed by them for the import of the said goods. In such circumstances, it is their case that they have requested permission from the first respondent to inspect the Import General Manifest allegedly filed by the petitioner.

5.This Court has perused the Show Cause Notice 14.02.2013, issued by the first respondent under Section 124 of the Customs Act, 1962, seeking for confiscation of goods as well as for imposing penalty on the petitioner. As seen from the Show Cause Notice, the first respondent in paragraph 8(vi) of the Show Cause Notice has referred to IGM No.2007076 dated 15.02.2011, allegedly filed by the petitioner, which has been denied by them. The same is extracted below:

> "8(vii) M/s.Green Port Shipping Agencies have filed IGM No.2007076 dated 02.02.2011 with wrong description of goods and intentionally concealed the information regarding the unclaimed shipment, appeared liable for penal action under Section 114AA of the Customs Act, 1962."

6.Even though there is a reference to IGM No.2007076 dated 02.02.2011, admittedly copy of the same has not been furnished to the petitioner nor the petitioner was allowed to inspect the said IGM allegedly filed by them. It is settled position of law that under Section 124 of the Customs Act, 1962, the petitioner must be given reasonable opportunity of being heard in the matter before passing final orders under Section 122 of the Customs Act, 1962. In the instant case, even though the Show Cause Notice refers to a IGM allegedly filed by the petitioner, which has been denied by them, the same has not been furnished to the petitioner nor the petitioner was allowed to inspect the said document by the first respondent under the impugned letter. Even though the impugned letter is not a final order and it is only an intimation, but in the said impugned letter the first respondent has categorically denied the request made by the petitioner to inspect the Import General Manifest allegedly filed by the petitioner. This being the case, this Court is of the considered view that even though the impugned letter is only a communication, but since the communication discloses that the first respondent has rejected the request of the petitioner to inspect the Import General Manifest, allegedly filed by the petitioner nor satisfied the requirements of Section 124 of the Customs Act, 1962 that reasonable opportunity will have to be given to the petitioner before final orders are passed, this Court deems it fit that the petitioner must be furnished with a copy of the Import General Manifest allegedly filed by them, which is relied upon by the first respondent in their Show Cause Notice dated 14.02.2013, issued by them to the petitioner under Section 124 of the Customs Act, 1962. However, this Court deems it fit that final adjudication orders has to be passed by the first respondent under Section 122 of the Customs Act, 1962 within a stipulated period fixed by this Court.

7.In the result, the first respondent is directed to furnish a copy of the Import General Manifest referred to in their Show Cause Notice dated 14.02.2013, to the petitioner within a period of two weeks from the date of receipt of a copy of this order. After furnishing a copy of the Import General Manifest to the petitioner, the first respondent shall pass final adjudication orders after affording sufficient opportunity to the petitioner, including granting them the right of personal hearing within a period of eight weeks thereafter.

8.With the aforesaid directions, this Writ Petition is disposed of. No costs. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

Sub Assistant Registrar(CS)

sj

To

1.The Commissioner of Customs,
Custom House,
New Harbour Estate,
Tuticorin - 628 004.

2.The Superintendent of Customs (Adjudication),
Office of the Commissioner of Customs,
Customs House,
Tuticorin - 628 004.

+1CC TO MR.R.ARAVINDAN, Advocate Sr. No. 64505

Order made in
W.P.(MD).No.11063 of 2019
and
W.M.P.(MD) No.8427 of 2019
30.04.2019

AL(CO)
TR (22.05.2019) 4P 4C