BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 08.08.2019
CORAM:
THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.(MD)No.17624 of 2017
and W.M.P.(MD)No.14175 of 2017

M/s.Indian Shipping and Logistics Facility Pvt., Ltd.,
Represented by its Manager G.Sathishkumar,
3/188/5A, MSP Tower,
Palayamkottai Main Road,
Tuticorin - 628 101. ... Petitioner

/Vs./

1.The Commissioner of Customs,
Custom House, New Harbour Estate,
Tuticorin - 628004.

2.The Commissioner of Customs (Appeals),
Customs House, No.1, Williams Road,
Tiruchirapalli - 620001.

3.The Additional Commissioner of Customs,
Custom House, New Harbour Estate,
Tuticorin - 628004.

4.The Deputy Commissioner,
Custom House, New Harbour Estate, Turicorin-628004.

5.The Assistant Commissioner,
Import Assessment, Custom House,
New Harbour Estate, Turicorin-628004. ... Respondents

PRAYER:- Writ Petition - filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records pertaining to the impugned show cause notice C.No.VIII/48/638/2013-Imp Assmt dated 08/08/2017 issued by the 4th respondent and quash the same.

For Petitioner : Mr.P.Saravanan
For Respondents : Mr.S.Gurumoorthy

ORDER

The petitioner challenges a show cause notice dated 08.08.2017 on the ground that penalty proposed to be issued under the impugned show cause notice has already been issued on 08.06.2017 by the Assistant Commissioner, Tuticorin.

2. The petitioner is a customs broker. Under authorization from an importer, two bills of entries, both dated 05.05.2017 had been filed for clearance of 'Rice Bran' from Malaysia. The bills of entry claim an exemption from the payment of duty that is admittedly incorrect, since the exemption notification had been replaced by Notification No.12/12 stipulating Basic Customs Duty at the rate of 15% upon the goods imported aforesaid.

3. The affidavit is wholly bereft of facts in regard to the circumstances in which the erroneous claim for exemption was put forth. The petitioner appears to have filed a letter dated 06.06.2017, a copy of which has not been placed before Court, seeking recall and re-assessment of the bills of entries in question. This request was accepted by the Assistant Commissioner, on 08.06.2017 stating as follows:

> 'Please refer your request letter dated 06.06.2017 on the above subject. In this regard, it is hereby informed that Additional Commissioner of Customs has granted permission to re-call & re-assessment of the Bills of Entry No.9577015 dated 05.05.2017 & 9578454, dated 05.05.2017 and imposed a penalty of amount of Rs.5,000/- on Customs Broker M/s.Indian Shipping and Logistics Facility Pvt. Ltd., Tuticorin.'

4. In response to the aforesaid letter, the petitioner, vide letter dated 08.06.2017, requests that it be permitted to remit the penalty imposed upon it under protest. It also makes a request for issuance of show cause notice. This request was reiterated on 14.06.2017 as follows:

> 'Ref:
> I) Our letter dated 05.06.2017
> ii) Your letter dated 06.06.2017 vide file No.C.No.VIII/48/638-2013-Vol-II Import
> iii) Our letter dated 08.06.2017
> --------
> We have requested vide our letter referred under S.No.(iii) above to permit us to pay penalty imposed on us under protest and further requested to issue Show Cause Notice (SCN) to us. Neither were we permitted to pay the penalty under protest not Show Cause Notice (SCN) issued sofar.'

5. In response, the Department has issued the present impugned show cause on 08.08.2017. In the meanwhile, on 23.06.2017, the petitioner has filed an appeal before the first appellate authority challenging the communication dated 08.06.2017 and has

intimated the assessing authority of the same. This appeal is stated to be pending before the first appellate authority who is in the process of hearing the same. It is in the aforesaid circumstances that the petitioner prays for quash of the show cause notice dated 08.08.2017.

6. I may state, at the threshold and straightaway that I am not inclined to consider the prayer of the petition for the reason that the affidavit filed in support of the writ petition is wholly bereft of material facts. It was incumbent on the part of the petitioner to have brought to the notice of the Court all the material events that have transpired in the matter, its letters dated 06.06.2017, 08.06.2017 and 14.06.2017 and the sequence of events leading to the issuance of the impugned show-cause notice. The fact that by letter dated 08.06.2017, the petitioner had accepted the levy of penalty and informed the assessing authority that it would remit the same, that it invited issuance of show cause notice, reiterating the request on 14.06.2017 constitute relevant material facts and ought to have been disclosed for appreciation by the Court. This has not been done and it was only when these factors were referred to by the revenue counsel that they came within the knowledge of the Court. I am of the view that since the petitioner has suppressed material facts leading to the issuance of the show cause notice, it does not deserve the indulgence of the Court and I, hence, reject this Writ Petition in limine.

7. For the above reasons, this Writ Petition is dismissed however granting liberty to the petitioner to file its objections to the show cause notice, within a period of two weeks form today. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar

Order made in
W.P.(MD)No.17624 of 2017
Dated:08.08.2019

Sm
MS/06.09.2019/3P.1C