IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.10.2020

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. Nos. 30354 and 30355 of 2005
and
W.M.P. Nos. 33233, 33234, 33235, 33237 and 33238 of 2005

Tamil Nadu Oil and Seeds Association,
Rep. by its President,
Post Box No.1639,
16, Francis Joseph Street,
Chennai - 600 001. ... Petitioner
(in both Wps)

-vs-

1.The Central Board of Customs and Excise,
Rep. by its Senior Analysts (DBK),
Govt. of India,
Ministry of Finance,
Department of Revenue,
South Block,
New Delhi.

2.The Chief Commissioner of Customs,
Custom House,
60, Rajaji Salai,
Chennai - 600 001.

3.The Commissioner of Customs (Imports),
Custom House,
Chennai - 600 001. ... Respondents
(in both Wps)

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Prayer in W.P. No. 30354 of 2005:- Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the case impugned Clarification letter issued by the 2nd Respondent in F.No. CVIII/48/117/04-CCO, dated 12.07.2005, issued by the Second Respondent herein and to quash the same.

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Prayer in W.P. No. 30355 of 2005:- Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the case in impugned Circular in F.No. 603/16/2004-DBK, dated 10.02.2005 issued by the First Respondent herein and to quash the same.

For Petitioner : Mr. T.Ramesh
(in both Wps)

For Respondents: Mr. A.P.Srinivas
Standing Counsel
(in both WPs)

C O M M O N O R D E R

(through video conference)

Heard Mr. T.Ramesh, Learned Counsel for the Petitioner and Mr. A.P.Srinivas, Learned Standing Counsel for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner, which is an association, has challenged the Circular in F. No. 603/16/2004-DBK dated 10.02.2005 issued by the First Respondent in W.P. No. 30355 of 2005, and the consequential Letter in F.No. CVIII/48/117/04-CCO dated 12.07.2005 issued by the Second Respondent in furtherance thereof in W.P. No. 30354 of 2005.

3. The grievance sought to be ventilated by the Petitioner in this Writ Petition is that the Respondents are levying interest for delayed payment under the DEPB Scheme in terms of Section 61 (2) of the Customs Act, 1962 (hereinafter referred to as 'the Act' for short) without reference to the fact that it is in the nature of an exemption from payment of customs duty.

4. The Hon'ble Supreme Court of India in Commissioner of Customs, Calcutta -vs- Indian Rayon and Industries Ltd., [(2008) 14 SCC 228] has explained the difference between the DEEC and DEPB schemes as follows:-

> "DEEC Scheme
> Under this scheme, the importer is issued an Advance Licence to procure the raw material for a manufacturer of the export product. The goods which are cleared under Advance Licence are meant for use in the manufacture of export product or replenishment of the raw materials already used. The clearance is allowed duty free. The details of items allowed for import

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against a specific export product are published by the Ministry of Commerce in their Input Output Norms which are part of the Exim Policy.

DEPB Scheme

Under this scheme, the exporters are issued DEPB scrips which allows them the specific amount to be utilized for payment of Customs duty. The amount for which DEPB scrip is issued depends upon the rate for a particular export product. The Ministry of Commerce notifies DEPB credit rates for export of an item. The DEPB scrip is freely transferable and can be used to debit the payment of duty at the time of clearance of goods except capital goods and goods mentioned in negative list."

5. The Division Bench of this Court in Tanfac Industries Limited -vs- Assistant Commissioner of Customs, Cuddalore (Order dated 20.04.2009 in C.M.A. Nos. 3609 to 3611 of 2008) noticed the aforesaid binding decision and upheld that the claim of the Customs Department for interest payable on clearance of warehouse goods when duty has been paid through DEPB debit as per the Circular No.26/07 dated 20.07.2007, by observing as follows:-

"12. ...The difference drawn by the Supreme Court in the above judgments make it clear that under the DEEC Scheme, the clearance is allowed duty free, whereas under DEPB Scheme, the exporters are issued DEPB scrips which allows them specific amounts to be utilised for payment of Customs duty. Therefore, the importers, who use DEPB scrips, pay duty not by cash but only by way of credit. This is clear from the judgment of the Supreme Court extracted above. Therefore, the goods cleared under DEPB Scheme cannot be treated an exempted goods, but they can only be treated to be duty-paid goods and therefore, the interest is payable as per Section 61(2) of the Act. The debit of any amount under the DEPB Scheme is a mode of payment of duty on the imported goods and cannot be treated as exempted goods, unlike the goods under DEEC Scheme."

In that view of the matter, it is not possible to countenance the claim made by the Petitioner in these Writ Petitions.

6. However, it is contended by the Learned Counsel for the Petitioner that in a subsequent decision in Commissioner of Customs, Tuticorin -vs- DCW Limited (Order dated 07.06.2013 in C.M.A. No. 1165 of 2007) the Division Bench of this Court has held that education cess cannot be levied for customs duty

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debited in DEPB licence and as there is divergence of judicial opinion, the matter may be referred to a Larger Bench of this Court.

7. It is not possible to accede to the aforesaid request for the following reasons:-

(i) the decision in Tanfac Industries Limited -vs- Assistant Commissioner of Customs, Cuddalore (Order dated 20.04.2009 in C.M.A. Nos. 3609 to 3611 of 2008) directly deals with the issue relating to levy of interest for the transactions under DEPB licence, which squarely applies to this case, whereas in Commissioner of Customs, Tuticorin -vs- DCW Limited (Order dated 07.06.2013 in C.M.A. No. 1165 of 2007) the question that arose for consideration was whether the education cess could be collected for the debited amount of customs duty under the DEPB scheme; and

(ii) the Division Bench of this Court in Tanfac Industries Limited -vs- Assistant Commissioner of Customs, Cuddalore (Order dated 20.04.2009 in C.M.A. Nos. 3609 to 3611 of 2008) has followed the ruling of the Hon'ble Supreme Court of India in Commissioner of Customs, Calcutta -vs- Indian Rayon and Industries Limited [(2008) 14 SCC 228], but it appears that neither the binding ruling of the Hon'ble Supreme Court of India nor the earlier decision of the Co-ordinate Bench of this Court has been placed for consideration before the Division Bench of this Court in Commissioner of Customs, Tuticorin -vs- DCW Limited in (Order dated 07.06.2013 in C.M.A. No. 1165 of 2007).

8. Be that as it may, in view of the dictum laid down by the Hon'ble Supreme Court of India in Mahinder Kumar Gupta -vs- Union of India [(1995) 1 SCC 85] holding the an Association cannot file Writ Petition seeking relief espousing the cause of its individual members and does not affect any legal right of that Association, it is also not possible to entertain these Writ Petitions for that reason.

9. In the result, these Writ Petitions are dismissed. Consequently, the connected Writ Miscellaneous Petitions are closed. No costs.

सत्यमेव जयते
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Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

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W.P. Nos. 30354 and 30355 of 2005

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srg 04/11/2020

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