IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 02.11.2020
CORAM
THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU
W.P. No. 25664 of 2011
and
M.P. No. 1 of 2011

M/s. Ashok Leyland Ltd.,
No. 1, Saradar Patel Road,
Guindy,
Chennai - 600 032.
(Represented by K.K.Sekar, DGM,
Corporate Taxation (Indirect Taxes)
... Petitioner

-vs-

1. The Joint Secretary to Government of India,
Ministry of Finance, Department of Revenue,
Revision Application Unit,
Bhikaji Cama Place,
New Delhi - 110 066.

2. The Commissioner of Customs (Appeals),
Mumbai - I,
Ballard Estate,
Mumbai.

3. The Assistant Commissioner of Customs,
Drawback Department Mumbai - I,
Mumbai.

4. The Commissioner of Central Excise,
Chennai III Commissionerate,
Chennai - 600 034.
... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the impugned proceedings of the First Respondent passed in Order No. 49/2011-Cus dated 16.03.2001 and quash the same.

For Petitioner : Mr. P.R.Renganath
For Respondents: Mr. V.Sundareswaran
Standing Counsel

O R D E R
(through video conference)

Heard Mr. P.R.Renganath, Learned Counsel for the Petitioner and Mr. V.Sundareswaran, Learned Standing Counsel for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Writ Petition challenges the order No. 49/2011-Cus. dated 16.03.2011 passed by the First Respondent rejecting the revision application filed by the Petitioner under Section 129-DD of the Customs Act, 1962 (hereinafter referred to as the 'Act' for short) preferred against the Order-In-Appeal No. 261/2009/MCH/AC/DBK/2009 dated 23.09.2009 passed by the Commissioner (Appeals), Customs, Mumbai.

3. Learned Counsel for the Petitioner has brought to notice of this Court that the impugned order has been passed by the Joint Secretary (Revision Application), Government of India, who was also in the same rank of Commissioner (Appeals), who had passed the Order-In-Appeal which had been challenged before him in that revision application, which is impermissible in law. He has also placed reliance on the decision of this Court in S.Moinuddin -vs- Joint Secretary, Government of India, Ministry of Finance, New Delhi (Order dated 24.01.2017 in W.P. No. 16682 of 2016), where this Court has interfered with the order that had been impugned therein in respect of similarly placed persons on that sole ground and had directed the matter to be heard by an authority after taking corrective measures in that regard. Learned Standing Counsel appearing for the Respondents, on instructions, states that subsequently, the Revisional Authority has been re-constituted, taking note of the anomaly pointed out by this Court.

4. Having regard to the aforesaid submissions made, the impugned order is quashed and the matter is remitted to the present Revisional Authority under Section 129-DD of the Act for fresh consideration of the matter. It shall be incumbent upon the Revisional Authority, after affording full opportunity of hearing to the Petitioner, to deal with each of the contentions raised and pass reasoned orders on merits and in accordance with law, uninhibited and uninfluenced by the impugned order, which has been set aside and communicate the decision taken to the Petitioner by 31.03.2021 under written acknowledgment.

In fine, the Writ Petition is ordered on the aforesaid terms. Consequently, connected Miscellaneous Petition is closed. No costs.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

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To

1. The Joint Secretary to Government of India,
   Ministry of Finance, Department of Revenue,
   Revision Application Unit,
   Bhikaji Cama Place,
   New Delhi – 110 066.

2. The Commissioner of Customs (Appeals),
   Mumbai – I,
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W.P. No. 25664 of 2011

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