BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 17.09.2020
CORAM
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
W.P.(MD)No.9583 of 2020
and
W.M.P.(MD)No.8639 of 2020

M/s.Karna Paper Mills,
Rep. by its Managing Partner Mr.M.Karunakaran,
27-A, East Market Street,
Periyakulam Road,
Theni-625 531. ... Petitioner

Vs.

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

2.The Assistant Commissioner of Customs (Import),
Customs House, New Harbour Estate,
Tuticorin-628 004. ... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order-in-Original TUT-CUSTM-PRV-COM-011-19-20, dated 13.03.2020 in C.No.VIII/10/12/2019-ADJN., passed by the first respondent herein and to quash the same as illegal, arbitrary and without jurisdiction and further, direct the first respondent herein to Re-hear and dispose off the same considering the consumption certificates furnished by the petitioner on merits after affording an opportunity of personal hearing.

For Petitioner : Mr.A.K.Jeyaraj
For Respondents : Mr.R.Aravindan

O R D E R

Heard the learned counsel appearing for the petitioner and the learned standing counsel appearing for the respondents.

2.The petitioner imported Wax Coated Waste Corrugated Paper Cuttings during the period from 14.12.2015 to 16.12.2017 under 96 bills of entries. The petitioner availed Concessional Rate of Duty under SI.No.292(A) of General Exemption Notification No.50/2017-Customs, dated 30.06.2017.

3.The petitioner's specific case is that they had sold the imported goods to M/s.Paper Packaging Private Limited, Shivamoga, Karnataka. The petitioner received show cause notice dated 15.04.2019 alleging that the petitioner had wrongly availed the basic customs duty and that they had not fulfilled the conditions of import. The petitioner denied the stand taken by the Department in the said show cause notice and offered their reply. An enquiry was also conducted. Even though the petitioner had imported goods under as many as 96 bills of entries, they were able to produce End Use Certificates only in respect of 63 transactions. According to the petitioner, they had not violated any of the conditions for availing concessional import duty. Not satisfied with the explanation submitted by the petitioner herein, the impugned order dated 13.03.2020 came to be passed. Questioning the same, this Writ Petition has been filed.

4.The respondents have filed a detailed counter affidavit. The specific stand of the respondents is that the petitioner ought to avail the alternative remedy available to him under the Customs Act and cannot rush to this Court in the first instance.

5.The learned standing counsel placed reliance on the following decisions in this regard.

(a) 2010 (255) E.L.T. 490 (S.C.) - Union of India Vs. Zalcon Electronics.
(b) 2017 (357) E.L.T. 104 (Mad.)-Deepak Kumar Vs. Principal Commissioner of Customs, Chennai.
(c) 2015 (326) E.L.T.108 (Mad.)-D.V.R. Freight Forwarders Private Limited Vs. Commr. of Cus. (Imports), Chennai.

6.The respondents have further contended that the petitioner ought to have utilized the imported goods only for own use. Instead of doing so, what the petitioner did was to extract the wax from the corrugated waste paper in their own unit and sell the items after such extraction to M/s.Paper Packaging Private Limited, Shivamoga, Karnataka.

7.Though the contentions regarding non exhaustion of remedy is quite formidable, I am of the view that in the case on hand, the petitioner can be allowed to bypass the statutory remedy. This is because, I do not propose to enter into any factual discussion.

8.The learned counsel appearing for the petitioner pointed out that the impugned order rests on the finding that the End Use certificate has not been issued by the jurisdictional authority.

9.His specific contention is that this point is not at all projected in the show cause notice. It is beyond dispute that the show cause notice does not contain this allegation. It is well settled that what is not in the show cause notice cannot be a ground in the final order. It would be a clear violation of the principles of natural justice. The noticesee cannot be taken by surprise in the final order. Therefore, on this sole ground of violation of principles of natural justice, the impugned order is liable to be interfered with. It is again settled that if the violation of principles of natural justice is ex facie evident, then, that is definitely a ground to permit the petitioner to bypass an alternative remedy available to him under the Statute. It is further stated that the petitioner has now obtained the End Use Certificate from the jurisdictional authority in respect of the remaining entries also.The petitioner states that if he is given one more opportunity, he would place all the materials before the respondents.

10.The stand of the respondents is that the imported goods should have been put only for own use consumption and should not have been sold.

11. I consciously refrain from entering into the merits of the matter. Since I have found that the petitioner has now obtained End Use certificate from the jurisdictional authority, in the interest of justice, he deserves to be granted one more opportunity. In this view of the matter, the order impugned in this writ petition is quashed. The matter is remitted to the file of the first respondent. The first respondent will issue a fresh hearing notice to the petitioner. On the said date, the petitioner should place all the materials such as End Use certificates before the first respondent for his consideration. It is for the first respondent to pass orders afresh in accordance with law. The Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy,shall be the responsibility of the advocate/litigant concerned.

To:

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

2.The Assistant Commissioner of Customs (Import),
Customs House, New Harbour Estate,Tuticorin-628 004.

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