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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.09.2021

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.12239 of 2013

M/s.Pan Asia Logistics India Pvt., Ltd.,
Represented by its General Manager Mr.T.V.Sreedhar,
No.46 & 48, Ehrlich Lab Building,
2nd Floor, Masilamani Road, Balaji Nagar,
Royapettah, Chennai - 600 014. ..Petitioner

vs

1. The Joint Secretary (Revision Application),
   Government of India,
   Ministry of Finance, Department of Revenue,
   14, Hudco Vishala Building, "B" Wing,
   6th Floor,
   Bhikaji Cama Place,
   New Delhi - 110 066.

2. The Commissioner of Customs (Appeals),
   Custom House,
   No.60, Rajaji Salai,
   Chennai - 600 001.

3. The Joint Commissioner of Customs (MCD)
   Custom House, No.60, Rajaji Salai,
   Chennai - 600 001.

4. The Commissioner of Customs (Imports)
   Custom House,
   No.60, Rajaji Salai,
   Chennai - 600 001. ..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the 1st respondent culminating in the Order dated 13.02.2013 issued from File No.373/45/SL/12-RA-Cus and quash the same.

For Petitioner : Mr.S.Murugappan

For Respondent : Mr.V.Sundareswaran
Senior Panel counsel
[For R1 to R4]

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ORDER

The order dated 13.02.2013 passed by the First respondent / Revision Authority is under challenge in the present writ petition.

2. The learned counsel for the petitioner raised a ground that the impugned order has been passed by an incompetent authority as the Joint Secretary (Review Application), Government of India, is equivalent to the cadre of Commissioner of Central Excise and Customs, who is the Appellate authority before whom, an order of revision is to be taken by way of an appeal. Therefore, equal ranking officials cannot pass both the order of revision and the order in appeal. It is possible that the very same Revisional authority may be posted as Commissioner (Appeals) and in such circumstances also, an anomaly will be created.

3. The learned counsel for the petitioner relied the decision of this Court in the case of S.Moinuddin Vs. Joint Secretary, Government of India, Ministry of Finance, New Delhi 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 this regard.

4. It is admitted by the learned Senior Panel counsel that subsequently, the Revisional authority has been reconstituted. Taking note of the anomaly pointed out by this Court and after 2016, now the Principal Commissioner of Central Excise and Customs is the Revisional authority and exercising the powers conferred under the Act. Considering the said ground, this Court also passed an order on 04.08.2021 in W.P.No.27392 of 2012 in the case of M/s.Hatsun Agro Products Limited, Vs. The Joint Secretary to Government of India.

5. As far as the present writ petition is concerned, the learned counsel for the petitioner raised the very same ground of incompetency of the Revisional authority in exercise of power.

6. However, the learned Senior Panel counsel filed a typed set of papers and contended that the copy of listing of subjects allocated to the Department of Revenue in the Government of India, (Allocation of Business) Rules, 1961 had not been produced before this Court, when the earlier writ petitions were decided. Therefore, this writ petition is to be considered with reference to the said rules issued as well as the delegation of powers conferred by the Government of India.

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7. Relying on the said Allocation of Business Rules 1961, the learned Senior Panel counsel contended that Revision Application Unit is a separate unit and the Revisional authorities are selected and posted to function as Revisional authority. Therefore, Mr.D.P.Singh, though working in the cadre of Joint Secretary, he was conferred with the powers of the Revisional authority by way of selection and therefore, the question of considering the equality in ranking would not arise at all. There are many number of instances, where equal cadre officials are delegated with certain powers under the Act for the purpose of dealing with the issues. Those powers of delegations granted under the Allocation of Business Rules are no way connected with the hierarchy of cadres and it is as such allocations and powers are done based on selection by the Government of India. In the present case, it is contended that Mr.D.P.Singh would have worked in the cadre of Joint Secretary during the relevant point of time. However, he was selected and posted as Revisional authority under the Allocation of Business Rules, 1961 and therefore, the powers to be exercised by the Revisional authority need not be compared with reference to the powers conferred on the Appellate authority under the provisions of the Act.

8. This apart, the learned Senior Panel counsel reiterated that against the order of the Revisional authority, the aggrieved person has got the right of filing a writ petition before the High Court. He need not go before the Commissioner (Appeals). Thus, the comparison would not cause any infringement of right to the aggrieved person and therefore, such a ground raised is untenable.

9. This Court is of the considered opinion that remanding of a matter can never be an empty formality. The order of remand even by the Courts sometimes may be an easy way out for the disposal of cases. However, the Courts are expected to decide the issues on merits in all circumstances and only on exceptional circumstances, where such an adjudication cannot be done by the Courts under Article 226 of the Constitution of India, then alone, the matters are to be remanded back for fresh adjudication. In fact, the disputed facts are to be adjudicated with reference to the documents and evidences to be considered. Thus, in such circumstances, the High Court has no option, but to remand the matter back to the authorities for fresh adjudication on merits. Even under the Code of Civil Procedure, remand of suits are restricted only if the trial Courts disposed of the suit on the ground of maintainability under Order 43 Rule 1. Therefore, remand is only an exception, wherein an exceptional circumstances are to be established by the petitioners.

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10. In the present case, the learned counsel for the petitioner states that the petitioner would be getting an opportunity to re-adjudicate the issues on merits before the competent authority now appointed i.e., the Principal Commissioner of Central Excise and Customs.

11. Per contra, the learned Senior Panel counsel opposed by stating that the issues were already decided by the Court and no more res integra. However, the petitioner states that they have got a distinguishable point on merits and thus, an opportunity is required to establish their case.

12. As far as the point of competency raised, this Court is of the considered opinion that as rightly pointed out, the Revisional authorities are posted to administer the "Revision Application Unit". The Revision Application Unit is a separate wing of the Board and officials are posted to deal with the Revision Applications alone. Therefore, the powers to be exercised by the Revisional authorities need not be compared with reference to the powers exercised by the Commissioner of Central Excise and Customs (Appeals), in view of the fact that against the order passed by the revisional authority, no appeal lies before the Commissioner of Central Excise and Customs (Appeals) and only a writ petition lies before the High Court under Article 226 of the Constitution of India.

13. In such circumstances, the petitioner cannot be construed as an aggrieved person and only in the event of establishing a right or grievance, the writ petition is to be entertained. In the absence of establishing any such right or its infringement, then the Allocation of Business Rules by the Government of India need not be found faulted.

14. Such jurisdictional point if raised by any person, is to be considered with reference to the grievances and the implications involved. In the event of such adjudication by such incompetent authority, if there is no violation of infringement of right, then the Courts need not go into the Allocation of Business Rules. Undoubtedly, if any such Allocation of Business is in violation of the provisions of the Act or Rules, then it is to be struck down. However, merely by comparison of cadres, inference is not called for.

15. This being the principles to be followed, while considering the preliminary issue of incompetency of an authority, based on the judgment rendered by the High Court of Punjab & Haryana, the Department has re-allocated the powers of the Revisional authority on the Principal Commissioner of Central Excise and Customs.

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16. It is brought to the notice of this Court that as of now, and right from the year 2016, the Principal Commissioner of Central Excise and Customs is exercising the powers of the Revisional authority and the Rulings of the Punjab & Haryana High Court had been accepted and implemented by the Department.

17. This being the status as of now, the petitioner need not be deprived of an opportunity of fresh adjudication on the hands of the Principal Commissioner of Central Excise and Customs. In view of the facts and circumstances, the impugned order passed by the first respondent in proceedings dated 13.02.2013 in File No.373/45/SL/12-RA-Cus is quashed and the matter is remitted back to the present Revisional Authority i.e., the Principal Commissioner of Central Excise and Customs 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, deal with each of the contentions raised and pass reasoned orders on merits and in accordance with law, inhibited and uninfluenced by the impugned order, which has been set aside.

18. With these observations, the writ petition stands allowed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Joint Secretary (Revision Application),
   Government of India,
   Ministry of Finance, Department of Revenue,
   14, Hudco Vishala Building, “B” Wing,
   6th Floor,
   Bhikaji Cama Place,
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4. The Commissioner of Customs (Imports)
   Custom House,
   No.60, Rajaji Salai,
   Chennai - 600 001.

Copy to:

The Principal Commissioner of Central Excise and Customs,
No.60, Rajaji Salai,
Chennai - 600 001.

+1cc to Mr.S.Murugappan, Sr No.45613
+1cc to Mr.V.Sundareswaran, Sr No.45369

W.P.No.12239 of 2013

MG (CO)
PR (24/09/2021)

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