IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2021
CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.Nos.38415 & 38416 of 2016
W.M.P.Nos.32901 to 32903 of 2016

M/s.Sri Sivaa Impex
Rep.by its Proprietor,
Mr.G.Jamesh Durai,
No.1/362, 4th Street, Adhithanar Nagar,
Iyyappanthangal, Chennai-600 056. ..Petitioner in both W.P's

vs.

1.The Assistant Commissioner of Customs (Gr.7B/7H)
Chennai-IV, Commissionerate,
Customs House, No.60,
Rajaji Salai, Chennai-600 001.

2.The Assistant Commissioner of Customs,
Revenue Recovery Unit,
Customs House Unit,
Customs House, No.60,
Rajaji Salai, Chennai-600 001.

3.The Deputy Commissioner of Customs (Gr.7B/7H)
Chennai-IV, Commissionerate,
Customs House, No.60,
Rajaji Salai, Chennai-600 001. ..Respondents in both W.P's

PRAYER in W.P.No.38415 of 2016 : Writ Petition filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari, to call for the records pertaining to the impugned Order-in-Original No.3715 of 2005 dated 20.04.2005 issued in F.No.DEPB-TA/104063/31.08.2004 by the 1st respondent and quash the same to the extent it demands customs duty over an amount of Rs.4,70,892/-.

PRAYER in W.P.No.38416 of 2016 : Writ Petition filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned communication dated 30.09.2016 issued in F.No.TA/104063/31.08.2004 of the 3rd respondent and quash the same and further direct the second respondent to consider the representation dated 17.08.2016 of the petitioner on merits and pass appropriate orders.

IN BOTH W.P's

For petitioner : Mr.G.Derrick Sam
For Respondent : Mr.A.P.Srinivas
Senior Panel Counsel for customs

C O M M O N O R D E R

The writs on hand are classic cases, where the petitioner has slept over his right and wake up one fine morning, and knocked the doors of the Department stating that there is an arithmetic error in respect of the order passed in the original on 20.04.2005. Admittedly, the Order-in-Original No.3715 of 2005 was passed by the Assistant Commissioner of Customs in proceedings dated 20.04.2005. The said order became final and no further appeal had been filed by the petitioner during the relevant point of time. Pertinently, the petitioner, after a lapse of about six years, sent a letter to the second respondent/Assistant Commissioner of Customs, on 18.11.2011 pointing out certain arithmetic error regarding the demand for differential duty. However, the fact remains that the petitioner has not filed any appeal against the Order -in-Original dated 20.04.2005 nor sent any communication to the respondent/Department pointing out the clerical or any other error regarding the calculation of differential duty to be paid by the petitioner.

2. The learned counsel appearing for the petitioner referred Section 154 of the Customs Act wherein the correction of clerical error etc., is permissible. However, the said correction is to be made within a reasonable period of time. It may not be possible for the Authorities to correct even such mistakes after a lapse of many years. Any such representation for correction is to be made within a reasonable period of time and if it is made after a lapse of many years, then it would not be possible for the Authorities to consider those aspects. Thus, the said provision would not be of any avail to the petitioner, in view of the fact that the petitioner has sent a letter to the second respondent admittedly after a lapse of six years.

3. Further, the learned Senior Standing Counsel made a submission that the power conferred under Section 154 of the Customs Act for rectification of the error must be exercised by the Department and the said provision cannot be construed as an appeal for the purpose of entertaining a letter from the petitioner and that too, after a lapse of six years. Thus, it is made clear that the provision is made available to rectify the error if any occurred at the instance of the Department. As far as the aggrieved persons are concerned, they are bound to prefer an appeal within the period of limitation contemplated.

4. The learned counsel appearing for the petitioner states that Section 154 is made available to all concerned for correction of arithmetic error. But, in the present case, the petitioner has approached the Authority after a lapse of six years admittedly.

5. This Court is of the considered opinion that the said letter sent after a lapse of six years would not constitute a cause for the petitioner to re adjudicate the issues which are already adjudicated in the Order-in-Original. Subsequently, the Authorities have passed an order stating that the petitioner had nowhere in the proceedings before the Adjudicating Authority, pointed out the wrong amount of duty calculation on the ground of arithmetic error. In view of the fact that the Authorities have again considered and formed an opinion that the writ petitioner during the adjudication or subsequently had not pointed out any such arithmetic error or otherwise, the Authorities cannot entertain such representation after a lapse of many years.

6. This being the factum, this Court is of the opinion that it may not be possible at this length of time to adjudicate the issues which were already decided in the year 2005. Thus, the letter of the petitioner sent after a lapse of many years deserves no further merit consideration as the said application itself is hit by the principles of latches. Accordingly, the writ petitions stand dismissed. No costs. Consequently, connected miscellaneous petitions are also closed.

s/d-
Assistant Registrar(CS-IX)

True Copy

Sub-Assistant Registrar

ssb

To
1.The Assistant Commissioner of Customs (Gr.7B/7H)
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Customs House, No.60,
Rajaji Salai, Chennai-600 001.

+1 CC to Mr.A.P. Srinivas, Advocate sr 25650.

GJ(CO)
SP(08/07/2021)