IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.18654 of 2021
&
W.M.P.Nos.19895 & 19899 of 2021

(Through Video Conferencing)

M/s. Heilsa Meditec LLP.,
Rep. by its Partner Mr. Ankit Chordia,
No.48/105, Kasturba Road,
Mohan Mansions,
Bengaluru - 560 001,
Karnataka. ... Petitioner

Vs

1. The Commissioner of Customs
(Imports-Group V-B)
Chennai - II Commissionerate,
No.60, Rajaji Salai, Customs House,
Chennai - 600 001.

2. The Additional Commissioner of Customs
(Imports-Group V-B)
Chennai-II Commissionerate,
No.60, Rajaji Salai, Customs House,
Chennai - 600 001.

3. The Assistant/Deputy Commissioner of Customs
(Import-Group V-B)
Chennai-II Commissionerate,
No.60, Rajaji Salai, Customs House,
Chennai - 600 001. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records pertains to the Assessment made in the Bill of Entry No.4645330, dated 12.07.2021, denying the request of the petitioner for the waiver of the late filing charges of Rs.8,25,000/- and quash the same as arbitrary and illegal and direct the Respondents to re-assess the Bill of Entry No.4645330, dated 12.07.2021, without insisting for late filing of charges for release of goods viz., 102 cartons of different variety of sporty therapy apparatus and fitness equipment.

For Petitioner : Mr.A.K. Jayaraj

For Respondents : Mr.A.P.Srinivas
Senior Standing Counsel

ORDER

The short point that arises for consideration in the present writ petition is whether the second respondent is justified in demanding a sum of Rs.8,25,000/- as late fee charges from the petitioner for the Bill of Entry No.4645330 dated 12.07.2021.

2.It is the case of the petitioner that the petitioner had earlier filed an advance Bill of Entry on 20.04.2021. On the same day, the respondents had also raised few queries asking the petitioner to furnish details of clearance from the Legal Meteorological Department. It is the further case of the petitioner that before petitioner could respond to the query dated 20.04.2021, the country went in for the second lock down on account of second wave of Covid-19. It is the further case of the petitioner that the petitioner was a importer from Banglore, Karnataka and Banglore was reeling under the second wave of Covid - 19 and most of the offices in Karnataka were shut down.

3.Appearing on behalf of the petitioner, the learned counsel for the petitioner further submits that the Tamil Nadu has also went in for a second lock down during the end of 2nd week of May 2021 and therefore at the end of 30th day from 20.04.2021, the Bill of Entry No.3634245, filed by the petitioner earlier on 20.04.2021 got purged in the website of ICEGATE of the Customs Department and therefore the petitioner was constrained to file a second Bill of Entry No.4645330 on 12.07.2021.

4.The learned counsel for the petitioner further submits that the both under the provisions of the Customs Act i.e., Section 46(3) of the Customs Act as also Regulation of 4(3) of the Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018, the officers under the Customs Department are empowered to waive of the late payment fees even if it is construed that there was a late filing of Bill of Entry after the first Bill of Entry purged in the Web Portal of the Customs Department.

5.That apart, the learned counsel for the petitioner further submits that there is no provision for purging the Bill of Entry either under the provisions of the Customs Act, 1962 or under the Provisions of aforesaid Regulations referred to supra. He therefore submits that as a matter of expediency, the petitioner was constrained to file a second

Bill of Entry on 12.07.2021 after the normality started to return. He submits that the entire country was under lock down during the period when the goods were imported and that even on the date when the second Bill of Entry was filed on 12.07.2021 normality was not fully restored.

6.He therefore submits that this was a fit case for granting waiver from payment of late fee charges on account of the second Bill of Entry for the same import which was covered by the earlier Bill of Entry dated 20.04.2021 vide bill of entry No.3634245.

7.The learned counsel for the petitioner has also drawn attention to the Instruction No.12/2017-Customs dated 31.08.2017 wherein the Central Board of Indirect Taxes has advised the jurisdictional Additional/Joint commissioner of Customs to judiciously exercise their power conferred on them to ensure that the trade and stakeholders and the diplomatic community are not put to undue hardship and necessary relief, as applicable, may be provided to importers in bona-fide cases.

8.The learned counsel for the petitioner further submits that the said instructions also enjoins that the Jurisdictional Chief Commissioners are requested to identify cases where reasons for late filing of Bill of Entry are not attributable to the importers and has issued suitable standing orders so that proper officers can exercise their powers in the interest of ease of doing business.

9.The learned counsel for the petitioner has also relied upon a standing order of Chief Commissioner of Customs (Preventive) dated 06.09.2017 wherein para 3 it has been clarified as under:

> ''(i)Technical problems related to ICEGATE connectivity, server etc.,
>
> (ii)The Bill of Entry number not generated by the system within the free period;
>
> (iii)Delay caused due to reasons which are beyond the control of the importer like natural calamities etc.,
>
> (iv)Delay in filing due to any other reasons which are considered as bonafide by the proper officer.''

10.Finally, the learned counsel for the petitioner has also placed reliance on few decisions of the Tribunal to persuade this Court for granting appropriate relief in this case. That apart, the learned counsel for the petitioner has also placed reliance on the decision of the Madurai Bench of this Court rendered in W.P.(MD).No.23333 of 2017 dated 09.01.2018 in the case of M/s.Lakshmi Dall Mill, Represented by its Proprietor Vs. The Assistant Commissioner of Customs

(Group I). The learned counsel for the petitioner further submits that in the aforesaid order of the Madurai Bench of this Court referred to CBEC Circular/instructions dated 31.08.2017 referred to supra and granted relief to a importer who had filed a Bill of Entry at a later point of time. The learned counsel for the petitioner also added that even in cases where fresh Bill of Entry was filed by subsequent buyers, the respondents have the practice of granting waiver in the exercise of power under Section 46(3) of the Customs Act, 1962 and Regulation 4(3) of the aforesaid Regulation. He therefore submits that this was an appropriate case for waiving the late fee charges and since the respondents failed to act in accordance of the Rule/Regulation interference under Article 226 of the Constitution of India is justified.

11.Appearing on behalf of the respondents, the learned Senior Standing Counsel for the respondents submits that the petitioner cannot ask for waiver of late payment fee inasmuch as the earlier Bill of Entry filed on 20.04.2021 was allowed to purge in Web Portal of the ICEGATE. It is submitted that the petitioner ought to have replied to the queries raised by the department for assessing the Bill of Entry filed on 20.04.2021. It is further submitted that the petitioner has not questioned the purging of the said Bill of Entry but instead has filed a second Bill of Entry on 12.07.2021 which was admittedly beyond the time specified in Section 46 of Customs Act, 1962 and therefore, the respondents are justified in imposing late payment fee on the petitioner.

12.The learned Senior Standing Counsel for the respondents further submits that the late payment of fee of amount Rs.8,25,000/- commensurates with the duty of Rs.21,51,393/- to be paid on the Bill of Entry. He further submits that if at all, the petitioner has to file an appeal before the Appellate Commissioner and since there is an alternate remedy, this writ petition is liable to be dismissed.

13.The learned counsel for the respondents submits these submissions were based on the written instructions and filing of counter be dispensed with. He further submits that the petitioner cannot take advantage of its own mistake by not regularizing the earlier Bill of Entry and file a second Bill of Entry and therefore it has to be construed that second Bill of Entry was a new Bill of Entry filed belatedly beyond the time prescribed under Section 46 of the Customs Act, 1961.

14.Heard learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents and perused the documents filed in support of present writ petition including the Bill of Entry filed on 20.04.2021 and the subsequent Bill of Entry on 12.07.2021. I have also perused the provisions of the Customs Act, 1961 and the provisions of the Bill of Entry (Electronic Integrated Declaration and Paperless Procession) Regulations, 2018.

15.Regulation 4 of the Bill of Entry (Electronic Integrated Declaration and Paperless Procession) Regulations, 2018 has been framed to implement Section 46(3) of the Customs Act, 1962. The practice of purging of Bill of Entry appears to be based on the practice adopted in various ports on account of the architecture of the ICEGATE. There is however no provision either under the Customs Act, 1962 or under the provisions of Regulation which contemplates purging of the Bill of Entry. In the facts of the case, the petitioner has filed a second Bill of Entry on 12.07.2021 and said the necessity for filing second Bill of Entry arose only on account of the fact that the earlier Bill of Entry dated 20.04.2021 got erased in the ICEGATE or the customs system. Therefore, the petitioner could not comply with the requirements regarding the query raised on 20.04.2021. It cannot be ignored that the entire world was under the second wave of Covid - 19 lockdowns were being imposed to protect the humanity from the throes of death. India was no exception, only few essential services were allowed to operate. This is a fit case where the second respondent ought to have exercised the discretion judiciously by granting waiver as this is a case where petitioner had not filed a fresh Bill of Entry for the first time but has filed a new Bill of Entry as the old Bill of Entry got purged and was erased in the ICEGATE. The provisions of the Customs Act and the Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018 does not contemplate purging of the bill of entry. In fact, the expression purging is neither found in the Act nor in the aforesaid Regulation. Therefore, question of imposing late fee chargers merely because an importer files a second Bill of Entry on account of the factors mentioned above would not justify the levy of late fee charges on the petitioner. Further it is noticed that in the impugned communication dated 12.07.2021 an amount of Rs.8,25,000/- was being demanded as a fine amount and not a late fee in terms of Regulation 4(3) of the Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018 and Section 46(3) of the Act. This is also clearly contrary to the scheme of the Customs Act, 1962 and Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018.

16.Considering the same, this writ petition is allowed by quashing the impugned order seeking to levy fine late fee on the petitioner under the provisions of Regulation 4(3) of the Act and Section 46(3) of the Act. The respondents are directed to release the goods which are lying under their control immediately subject to the petitioner paying the requisite Customs duty and the applicable taxes within a period of ten days from the date of receipt of a copy of this order. The petitioner shall pay the taxes and applicable duties immediately. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-V)

//True copy//

Sub Assistant Registrar

jas

To

1. The Commissioner of Customs (Imports-Group V-B)
Chennai - II Commissionerate,
No.60, Rajaji Salai, Customs House,
Chennai - 600 001.

2. The Additional Commissioner of Customs (Imports-Group V-B)
Chennai-II Commissionerate,
No.60, Rajaji Salai, Customs House,
Chennai - 600 001.

3. The Assistant/Deputy Commissioner of Customs
(Import-Group V-B)
Chennai-II Commissionerate,
No.60, Rajaji Salai, Customs House,
Chennai - 600 001.

+1cc to Mr.A.K. Jayaraj, Advocate SR.No.57579

+1cc to Mr.A.P.Srinivas, Advocate SR.No.57797

W.P.No.18654 of 2021
&
W.M.P.Nos.19895 & 19899 of 2021

VBM(CO)
GMY(10/12/2021)