IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2021

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.NO.24365 OF 2021

(Through Video Conferencing)

M/s.Autozone
Partnership firm rep.by its partner
Shri.Sajeev Mathew Rajan
170, Mettupalayam Road,
Eru Company Bus Stop,
Coimbatore 641 043.

...Petitioner

vs.

1. The Commissioner of Customs II,
Commissionerate of Customs II,
60, Rajaji Salai, Custom House,
Chennai 600 001.

2. The Deputy/Assistant Commissioner of Customs,
(Gr.5B&5C),
Commissionerate of Customs II,
Custom House,
Rajaji Salai, Chennai 600 001.

...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the 2nd respondent to issue speaking order in terms of the order dated 03.12.2009 passed by the Commissioner of Customs (Appeals) in Order-in-Appeal C.Cus.No.1469/2009 and Section 17(5) of the Customs Act, 1962.

For Petitioner : Mr.B.Satish Sundar

For Respondents : Mr.G.Meganathan
Standing Counsel

ORDER

When this case was taken up for hearing on 16.11.2011, learned Standing Counsel had taken notice on behalf of the respondents. This case was directed to be listed on 23/11/2021. On 23.11.2021, the learned Standing Counsel requested for further time for filing counter on 25.11.2021, finally. Even today, i.e. 25.11.2021, the respondents have not get ready with the counter. Hence, this writ petition is being disposed considering the limited nature of the relief sought for and considering the fact that no prejudice will be caused to the respondents.

2. It is the case of the petitioner that the petitioner had imported consignment of automobile parts from Malaysia. The petitioner filed Bill of Entry No.642689 dated 09.01.2008 for clearance of the goods on the discounted rates.

3. The 2nd respondent, the Deputy Commissioner of Customs assessed the Bill of Entry without taking into consideration of the discount 50% given to the petitioner by the overseas seller in the invoice. While assessing the Bill of Entry under Section 17 of the Customs Act, 1962 and thus adopted the value without discount offered by the overseas supplier from Malaysia.

4. In order to get the goods released, the petitioner paid the duty of Rs.8,26,221/- vide TR 6 Chalan dated 28.02.2008 and preferred an appeal under Section 128 of the Customs Act, 1962 before the Commissioner of Customs (Appeals) Chennai by challenging the assessment made by the 2nd respondent, the Deputy Commissioner of Customs. The appeal was numbered and the same came to be disposed by the said Appellate Commissioner vide Order-in-Appeal C.Cus.No.1469/2009dated 3.12.2009. It is submitted that the appeal was allowed by the Appellate Commissioner with the following observations:-

> "Here duty has also been paid under protest. It has been noted in the case of Collr.Of C.Ex.Vs Prestige Engr.(India) Pvt Ltd 1989(41)ELT 530 (Tri) that once a protest has been lodged it becomes the duty of the Asst.Commissioner to dispose of the protest by an appeal-able order so that the respondent company could go in appeal against those orders, otherwise the protest cannot be deemed to have subsided, it is alive till it is disposed of by a suitable speaking oirder. This order is pari materia to the facts herein. Vacation of the protest will also close the issue for the department thereby disabling the appellants from claiming a refund after six months, as the period of

limitation for claiming refund would then come into play. Thus, the action of the department in not issuing speaking order is against the rule of law and natural justice. Therefore, I direct that the jurisdictional authority shall issue a speaking order vacating the protest within a period of 15 days from receipt of this order".

5. Thereafter, the petitioner has sent representation to the 2nd respondent to pass a speaking order in terms of the Appellate Commissioner's order referred to supra.

6. The learned counsel for the petitioner also submits that a personal hearing was also conducted on 12.11.2010. However, no order has been passed. The petitioner also appears to have sent a legal notice on 22.06.2017 to the Chief Commissioner of Customs to implement the order dated 3.12.2009 passed by the Appellate Commissioner for issuance of a speaking order in terms of Section 17(5) of the Customs Act, 1962.

7. The learned Standing Counsel for the respondents submits that the writ petition is not maintainable.

It is to be noticed that the order of the Appellate Commissioner has not been implemented by the 2nd respondent. In fact, the 2nd respondent as an Assessing Officer is bound to implement the order of the Appellate Commissioner.

8. In this connection, a reference may be made to the decision of the Hon'ble Supreme Court in Union of India vs. Kamalakshi Finance Corporation Ltd, 1991(55) E.L.T.433(S.C.). The supreme Court observed as under:-

"8. We have dealt with this aspect at some length, because it has been suggested by the learned Additional Solicitor General that the observations made by the High Court, have been harsh on the officers. It is clear that the observations of the High Court, seemingly vehement and apparently unpalatable to the Revenue, are only intended to curb a tendency in revenue matters which, if allowed to become widespread, could result in considerable harassment to the assessee-public without any benefit to the Revenue. We would like to say that the department should take these observations in the proper spirit. The observations of the High court should be kept in mind in future and utmost regard should be paid by the adjudicating authorities and the appellate authorities to the requirements of judicial discipline and the need for giving effect to the orders of the higher appellate authorities which are binding on them".

9. In absence of a valid challenge to the order of the Appellate Commissioner, the 2nd respondent has no choice but to pass a speaking order.

10. In the light of the above, I am inclined to pass the following orders:-

i) The 2nd respondent is directed to pass appropriate orders on merits and in accordance with law and implement the order of the Commissioner of Customs (Appeal) Order in C.Cus.No.1469/3009 vide dated 03.12.2009.

ii) The 2nd respondent shall pass a speaking order within a period of 30 days from the date of receipt of a copy of this order.

iii) If desired, the petitioner may also request the Commissioner of Customs Appeal to extend personal hearing of the petitioner.

11. This writ petition stands allowed with the above observation. No costs.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

kkd

To
1. The Commissioner of Customs II,
Commissionerate of Customs II,
60, Rajaji Salai, Custom House,
Chennai 600 001.
2. The Deputy/Assistant Commissioner of Customs,
(Gr.5B&5C),
Commissionerate of Customs II,
Custom House,
Rajaji Salai, Chennai 600 001.

W.P.No.24365 of 2021

PL(CO)
RLP(22/12/2021)