IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2021

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.25880 of 2021
and
W.M.P.No.27352 of 2021

(Through Video Conferencing)

M/s.M.L.Auto Enterprises,
Represented by its Kartha/HUF,
Mr.Pradeep Kumar Jain,
No.42, Sri Sudharma Apartments,
IIIrd Main Road, Raja Annamalaipuram,
Chennai - 600 028. ... Petitioner

Vs

The Deputy Commissioner of Customs (UCC),
Chennai IV, Rajaji Salai,
Customs House, Chennai - 600 001. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records pertaining to the impugned exparte Order-in-Original No.86682/2021 dated 03.11.2021 passed by the respondent herein and to quash the same, in so far as, the said exparte impugned order has been passed by the respondent without affording an opportunity of personal hearing and also by not considering the reply dated 11.10.2021 furnished by the petitioner to the Show Cause Notice dated 21.09.2021, which is in clear violation to the Principles of Natural Justice.

For Petitioner : Mr.S.Baskaran
For Respondent : Mr.Rajendran Raghavan
Senior Standing Counsel

ORDER

Mr.Rajendran Raghavan, learned Senior Standing Counsel takes notice on behalf of the respondent.

2. The petitioner was issued with a Show Cause Notice dated 21.09.2021. The Show Cause Notice itself fixed date of hearing as 24th or 27th or 28th September 2021.

3. It is the case of the petitioner that the notice itself was received at the first date fixed for personal hearing. The learned counsel for the petitioner submits that

the petitioner has also given interim reply on 30.09.2021 and has asked for further time to give a reply. However, without giving an adequate opportunity to reply, the respondent has passed the impugned order.

4. The learned counsel for the petitioner further submits that the impugned order is contrary to Board Circular dated 10.03.2017 bearing Circular No.1053/2/2017-CX (F.No.96/1/2017-CX.I). The learned counsel also submitted that the petitioner has filed a final reply to the Show Cause Notice on 11.10.2021.

5. The learned counsel for the petitioner is specifically drawn attention to Paragraph 14.3 in the Board Circular, which reads as under:-

> "14.3. Personal hearing: After having given a fair opportunity to the noticee for replying to the show cause notice, the adjudicating authority may proceed to fix a date and time for personal hearing in the case and request the assessee to appear before him for a personal hearing by himself or through an authorised representative. At least three opportunities of personal hearing should be given with sufficient interval of time so that the noticee may avail opportunity of being heard. Separate communications should be made to the noticee for each opportunity of personal hearing. In fact separate letter for each hearing/extension should be issued at sufficient interval. The Adjudicating authority may, if sufficient cause is shown, at any stage of proceeding adjourn the hearing for reasons to be recorded in writing. However, no such adjournment shall be granted more than three times to a noticee."

6. The learned counsel for the petitioner therefore prays that the impugned order be set aside and the matter be remitted back to the respondent to pass appropriate orders.

7. The learned Senior Standing Counsel for the respondent submits that the respondent have filed counter. It is further submitted that the petitioner is having an alternate remedy before the Appellate Commissioner in terms of Customs Act, 1962 and therefore, the writ petition filed by the petitioner is liable to be dismissed.

8. Heard the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents.

9. Though the respondents have filed their counter, considering the fact that the impugned order is a non-speaking order, I am inclined to take up the writ petition and dispose of.

10. The petitioner received the notice of personal hearing on the first date fixed for the personal hearing. The petitioner has also given an interim reply on 30.09.2021 and had asked for further time to give a reply. However, without giving an adequate opportunity to reply, the respondent has passed the impugned order. The petitioner has filed a final reply to the Show Cause Notice on 11.10.2021 unaware of the impugned order of the respondent.

11. The impugned order is contrary to para 14.3 of the Board Circular dated 10.03.2017 bearing Circular No.1053/2/2017-CX (F.No.96/1/2017-CX.I) which reads as under:-

> "14.3 Personal Hearing: After having given a fair opportunity to the noticee for replying to the show cause notice, the adjudicating authority may proceed to fix a date and time for personal hearing in the case and request the assessee to appear before him for a personal hearing by himself or through an authorised representative. At least three opportunities or personal hearing should be given with sufficient interval of time so that the noticee may avail opportunity of being heard. Separate communications should be made to the noticee for each opportunity of personal hearing. In fact separate letter for each hearing/extension should be issued at sufficient interval. The Adjudicating authority may, if sufficient cause is shown, at any stage of proceeding adjourn the hearing for reasons to be recorded in writing. However, no such adjournment shall be granted more than three times to a noticee."

12. The procedure adopted in fixing the personal hearing immediately after issuance of the show cause notice without giving adequate time to the petitioner to reply, itself shows that the respondent was in a hurry to pass orders mechanically. Indeed the order passed by the respondent is mechanical as there is no discussion and the only discussion which are available in paragraphs 6, 7 and 8 reads as follows:

> "6. I have carefully gone through the facts of the case and documents available on records. I find from the records that notice under Section 48 of Customs Act, 1962 was issued by the custodian to the importers to clear the impugned goods and the importers did not come forward to clear the goods. Since the importers replied to SCN vide their letter dated 11.10.2021 stated that the impugned goods are the one, which has been originally exported from Chennai Seaport Customs to the overseas buyer at China for R& D Purpose and it is the very same goods, which has been re-imported back to the country.
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> 7. In view of the above, I have no hesitation in holding the impugned goods, namely "Used Motor Parts weighing 225kgs (G.Wt.) valued at Rs.1,50,000/-, vide

IGM No.2246340/07.02.2020 and Line No.836 is liable for penalty under Section 112(a) of the Customs Act, 1962.

8. Accordingly, I pas the following order."

13. The procedure adopted by the respondent is clearly contrary to the circular issued by Central Board of Excise & Customs vide Circular No.1053/2/2017-CX, dated 10.03.2017.

14. Considering the aforestated position, the impugned order is quashed and the case is remitted back to the respondent to pass speaking order within a period of four week from the date of receipt of a copy of this order. While passing such order, the respondent shall consider the interim reply given by the petitioner dated 30.09.2021 and final reply dated 11.10.2021. The petitioner shall also be given an opportunity of personal hearing.

15. The Writ Petition stands disposed with the above observations. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

The Deputy Commissioner of Customs (UCC),
Chennai IV, Rajaji Salai,
Customs House, Chennai - 600 001.

+1 cc to Mr.S.Baskaran, Advocate Sr.NO. 68226

W.P.No.25880 of 2021
and
W.M.P.No.27352 of 2021

KSM(CO)
A.SK(20.01.2022)

20.12.2021