

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 25.03.2021
CORAM:

THE HONOURABLE MR. JUSTICE C.SARAVANAN
W.P.Nos.28048 & 28049 of 2017
and
M.P.Nos.30118 & 30119 of 2017

M/s.Innomit Mineral Projects Pvt Ltd,
Represented by its Managing Director,
Mr.P.Chandra Paul,
Plot No.11 & 12, Flat No.G3, SVR Homes,
Panchavati Colony, New Bowenpally,
Secundrabad 500 009.

.... Petitioner in both W.Ps.

Vs.

1.The Additional Commissioner of Customs,
Docks Intelligence Unit,
Chennai III Commissionerate,
Custom House, 60 Rajaji Salai,
Chennai 600 001.

2.The Assistant Commissioner of Customs (Refunds),
Customs House, 60 Rajaji Salai,
Chennai - 600 001.

.... Respondents in both W.Ps.

Prayer in W.P.No.28048 of 2017: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari, to call for the records of the impugned show cause notice dated 21.09.2017 issued by the 1st Respondent in S.Msc.28/2014-DIU and quash the same.

Prayer in W.P.No.28049 of 2017: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of Writ of Mandamus, to direct the 2nd Respondent to refund the duty amount of Rs.13,58,794/- paid by the petitioner in respect of bill of entry No.4891479 dated 13.03.2014 along with interest.

For Petitioner : Mr.Hari Radhakrishnan
(in both W.Ps)

For Respondents : Mr.K.Ravi
(in both W.Ps) SPC

C O M M O N O R D E R

The petitioner has impugned the show cause notice dated

21.09.2017 issued by the 1st respondent bearing reference No.S.Msc.28/2014-DIU to show case as to why the petitioner should not pay the customs duty for the imported Caustic Soda.

2.The petitioner had placed orders for import of Remelted Lead Ingots from the supplier in China and had paid the necessary charges to the exporter from China. Based on the import documents, the petitioner, also filed Bill of Entry in advance for assessments of the imported consignment and paid Customs duty for a sum of Rs.13,58,794/- vide Bill of Entry No.4891479 dated 13.03.2014.

3.At the time of inspection of the imported consignments by the Officers, it transpired that the Chinese exporter had cheated the petitioner and instead of exporting Remelted Lead Ingots, had exported packs of Caustic Soda Bags and Industrial Salt. The petitioner initially decided to clear the imported Caustic Soda Bags and Industrial Salt to recover the loss. However, on inspection of the imported consignment, it was found that the imported cargo was worthless and comprised of some Industrial Salt, Chalk Powder and lower grade Caustic Soda. Therefore, the petitioner decided to abandon the goods under Section 23 of the Customs Act, 1962 and requested refund of Rs.13,58,794/-, paid as Customs duty by the petitioner.

4. Thereafter, the petitioner also filed a formal refund application on 17.04.2014. Since the refund claim filed by the petitioner and the 2nd respondent was not sanctioned, the petitioner was constrained to file W.P.No.20027 of 2014 which came to be disposed by an order dated 28.10.2014 by directing the 2nd respondent herein to dispose the petitioner's refund application dated 17.04.2014 as expeditiously as possible within a period of four months from the date of receipt of a copy of this order.

5.Pursuant to the directions of this Court in W.P.No.20027 of 2014 vide order dated 28.10.2014, the 2nd respondent passed Order-in-Original No.40754 of 2015 in Job No.39754 of 2015 has rejected the refund claim filed by the petitioner, on the ground, that the refund claim was pre-mature and a an offence case was proposed to be initiated against the petitioner and therefore, the petitioner was not entitled to relinquish title over the imported goods as investigation was still pending. The petitioner therefore filed Contempt Petition in Cont.P.No.1508 of 2016 which came to be disposed by an order dated 27.06.2016.

6.Aggreived by the order of the 2nd respondent dated 12.08.2015 the 2nd respondent in Order-in-Original No.40754 of 2015, the petitioner filed an appeal before the Commissioner of

Customs (Appeal-II) in C3-II/606/R/2016-SEA. The said Appeal came to be disposed by an order dated 05.08.2016 in Order in Appeal C.Cus II No.756 of 2016 with the following observations:

7. In view of the discussions as above, I set aside the impugned order and the LAA is directed to get a reply from the DIU as to whether any offence case is booked in respect of these goods. The refund claim is already pending for more than three months and interest would have to be paid on delayed refund if paid eventually, as per provisions of Section 27A, after 3 months from the date of application i.e. 17.04.2014, in the light of the Hon'ble Supreme Court order in the case of M/s. Ranbaxy Laboratories Ltd Vs. UOI reported in 2011(273) ELT 3 (SC).

7. Under these circumstances, the petitioner once again pursued with the refund claim. In the above background, the impugned show cause notice dated 21.09.2017 in S.Misc.28/2014-DIU has been issued by the respondent wherein the petitioner has been called upon to show cause as to why:-

(i) The items of Caustic Soda weighing 21,625 kgs valuing at Rs.5,55,394.88 and Industrial Salt weighing 19,250 kgs valuing at Rs.1,17,713.75, which do not correspond with the material particulars mentioned in the Bill of Entry No.4891479/13.03.2014 should not be reassessed under appropriate CTH and should not be confiscated under Section 111(m) of Customs Act, 1962.

(ii) Penal action should not be taken against M/s Innomit Minerals Project Pvt.Ltd under Section 112 and 117 of the Customs Act 1962, for their failure to produce the goods for which entries were made in the Bill of Entry 4891479/13.03.2014 and for not taking due Caution and care which a normal prudent business should do, which amounts to omission, and for having rendered the goods liable for confiscation under Section 111(m) of the Customs Act 1962.

(iii) Penal action should not be taken against NI/s.Hanjin Shipping India Pvt Ltd under Section 116 of the Customs Act, 1962 for not having accounted for the declared goods 50MTs of re-melted Lead Ingots having an invoice value of Rs.29,45,000/- involving

a duty of Rs.13,58,794/- and for failure to account the declared goods.

(iv) Penal action should not be taken against M/s. CITPL under Section 117 of Customs Act, 1962 for their failure to install weighbridge and weigh the container on its arrival and for failure to inform the Customs Authorities about discrepancy in weight, and thereby not fulfilling the obligations required under provisions of handling of cargo in Customs Areas Regulation, 2009 read with subsection (2) of Section 141 read with Section 157 of the Customs Act, 1962.

(v) Penal action should not be taken against M/s.SANCO Trans Ltd, Chennai - 57, under Section 117 of Customs Act, 1962 for their failure to inform AC(DOCKS), Customs, Chennai about the discrepancy noticed in weightment for the container Nos.SEGU1759639 & TRHU1953876.

8.The learned counsel for the petitioner submits that the show cause notice was malafide and liable to be quashed in as much as it has been issued only with a view to deny legitimate refund of the Customs duty paid by the petitioner in advance for import of Remelted Lead Ingots. Even before the goods were examined either by the petitioner or by the Customs Department after the goods were imported by the petitioner, aforesaid duty was paid in advance as per the prevailing practice.

9.It is submitted that the Customs duty was paid by the petitioner as early as 13.03.2014 and more than 7 years had lapsed and the refund claim has been denied.

10.The learned counsel for the respondent submits that the petitioner has no other option but to file a reply to the impugned show cause notice and therefore the present writ petition was liable to be dismissed. He submits that the imported goods were confiscable and therefore the petitioner cannot have a remedy under Section 23 of the Customs Act, by abandoning the imported cargo.

11.The learned counsel for the respondent further submits that in any event, the petitioner can be directed to participate in the impugned show cause proceedings with a direction to pass appropriate orders in accordance with law within a period of 3 months from the date of receipt of a copy of this order.

12.Heard, the learned counsel for the petitioner and the

respondent.

13.The petitioner appears to be a victim of the chinese exporter. The petitioner had made a victim of fraud . The petitioner therefore, seek refund of the customs duty paid at the time of filing of Bill of Entry under the self assessment procedure under the Customs Act, 1962.

14.After the Customs duty was paid, when the petitioner and the Customs Department inspected the imported goods, it was found that the Chinese Exporter imported Chalk Powder, Caustic Soda and Industrial Salt and instead of Remelted Lead Ingots.

15.The petitioner therefore requested the respondent to refund the Customs duty. Prior to refund the claim, the petitioner had decided to clear the imported goods to recover the loss suffered by the petitioner. However, the petitioner realized that the imported goods was worthless and had no marketable value and therefore the petitioner decided to abandon the goods.

16. I have considered the arguments advanced by the learned counsel for the petitioner and the respondent.

17.The question that arises for consideration the present writ petition is whether the petitioner is entitled to have the impugned show cause notice issued by the respondent quashed or should be relegated to participate in the said proceedings. The show cause notice delayed considerably. Even though, there is no limitation prescribed under 124 of the Customs Act, 1962, the petitioner is entitled to abandon the imported goods abandoned under Section 23 of the Customs Act, 1962. It cannot be said that the petitioner had indulged in any offence while importing the goods. On the other hand, the petitioner is an victim of fraud perpetrated by the Chinese.

18.The petitioner has paid a sum of Rs.13,58,794/- as Customs duty in good faith on the goods declared in the Bill of Trading namely Remelted Lead Ingots.

19.That being the case, the petitioner is entitled for refund of the Customs duty paid in good faith. The amount that was paid for imported the Remelted Lead Ingots cannot be retained.

20. The value of the imported goods is Rs.6,37,107/- [5,55,394 + 1,17,713/-], whereas the petitioner paid a sum of Rs.13,58,794/- as customs duty paid in advance under bonafide beleif on import of Remelted Lead Ingots. Therefore, there is

no justification in not ordering refund of Rs.6,85,687/- [13,58,794 -6,37,107/-] being the difference in the above amount to the petitioner. The respondent Customs Department can at best order confiscation of the imported Caustic soda and Industrial Salt with an option to the petitioner to pay fine in lieu of confiscation under Section 125 of the Customs Act, 1962. It cannot force Customs Duty on imported goods on the petitioner.

21. Therefore, there is no justification in not refunding the aforesaid differential amount of Rs.6,85,687/- to the petitioner. Once the goods are ordered to be confiscated assuming they are liable to be confiscated, they become the property of the Union of India under Section 126 of the Customs Act, 1962.

22. The respondent Customs Department can auction and appropriate the proceeds towards fine that may be imposed against the petitioner in lieu of confiscation under Section 125 of the Customs Act, 1962. This exercise ought to have been done much earlier. Both the respondent Customs Department was responsible for the delay in as much as show cause proceedings was initiated at an earlier point of time and the petitioner due to present writ petition.

23. Therefore, to meet ends of justice, I direct the respondent to refund a sum of Rs.6,85,687/- being difference between the value of the goods imported and the customs duty paid to the petitioner within appeal of 30 days from the date of receipt of this order together with interest at 7.5% from the date of payment till the date of refund. Since the amount of Rs.13,58,794/- was paid before clearance of any goods, that refund of amounts pursuant to this order and orders to be passed will be outside the scope of Section 27 of the Customs Act, 1962. It is made clear that the petitioner shall not be subjected to any test of unjust enrichment.

24. The balance amount of Rs.6,73,107/- [13,58,794-6,85,687/-] shall be held in lien in the hands of the respondent Customs Department and is to be refunded back to the petitioner subject to outcome of the impugned show cause proceedings.

25. The petitioner is therefore directed to file appropriate reply to the impugned show cause notice to the aforesaid period. The respondent shall thereafter adjudicate the impugned show cause notice and pass appropriate orders in accordance with law without any revenue bias within a period of three months of such reply after following the principal of mature Justice by affording an opportunity of personal hearing.

26. In case, no case is made out for confiscation of the imported goods or the respondent customs department comes to a

conclusion that the goods were to be confiscated, the petitioner may be given an option to pay fine in lieu of confiscation under Section 125 of the Customs Act, 1962. In case, the petitioner decides to still abandon the imported goods, the Customs Department may take suitable action to auction the imported goods under Section 126 of the Customs Act, 1962 and refund the balance amount to the petitioner which will be held by the respondent customs department as lien pending adjudication of the impugned show cause proceedings in accordance with Law.

27. Needless to state, such order to be passed by the respondent is without prejudice to the right of the petitioner to file an appeal before the Appellate Commissioner and then revision before the Revisional authority or Appellate Tribunal in the hierarchy of the appellate/revisional authorities prescribed under the provisions of the Customs Act, 1962.

28. These Writ petitions stand allowed with the above observations. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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Notes:-In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To:

1.The Additional Commissioner of Customs,
Docks Intelligence Unit,
Chennai III Commissionerate,
Custom House, 60 Rajaji Salai, Chennai 600 001.

2.The Assistant Commissioner of Customs (Refunds),
Customs House, 60 Rajaji Salai, Chennai - 600 001.

+cc to Mr.Hari RadhaKrishnan, Advocate, Sr.No 20245

W.P.Nos.28048 & 28049 of 2017
and
M.P.Nos.30118 & 30119 of 2017

UM(CO)
baf 07/05/2021