BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 16.02.2021
CORAM:
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
W.P.(MD)No.2124 of 2021
and
W.M.P.(MD)No.1789 of 2021

M/s.Sri Venkateshwara Paper Boards,
Rep. by its General Manager Mr.L.Barath,
No.4/39, Pethureddipatti Village,
Sattur-626 203,
Tamilnadu. ... Petitioner

Vs

1.The Commissioner of Customs,
Custom House,
New Harbour Estate,
Tuticorin-628 004.

2.The Joint Commissioner of Customs,
Custom House,
New Harbour Estate,
Tuticorin-628 004.

3.The Assistant Commissioner of Customs (SIIB),
Custom House,
New Harbour Estate,
Tuticorin-628 004. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records in File C.No.VIII/48/64/2020-SIIB, dated 29.12.2020 issued by the third respondent herein and quash the same and direct the respondents to permit the petitioner to mutilate the imported goods viz., 459 packages viz., 55.740 MT of mixed wet strength scrap paper (Silicon Paper and Coated) vide Bill of Entry No.9846155, dated 06.12.2020 under Section 24 of the Customs Act, 1962, under Customs Supervision and to allow clearance of the above goods under the exemption claimed for Waste Paper considering the PSI Certificate issued by the Approved Certification Agency by the Government of India .

For Petitioner : Mr.A.K.Jayaraj
For Respondents : Mr.R.Aravindhan

ORDER

Heard the learned counsel appearing for the petitioner and the learned Standing Counsel appearing for the respondents. With the consent of learned counsel on either side, the Writ Petition is taken up for final disposal at the admission stage itself.

2.The petitioner had imported the petition mentioned consignment. The stand of the petitioner is that they have already been mutilated and that therefore, their import is free. The stand of the respondent on the other hand is that the consignment contains usable paper and that therefore, they had agreed to release the goods only on provisional basis.

3.Even though the petitioner had not asked for any provisional release under Section 110 of the Customs Act, 1962, the third respondent has passed the impugned order dated 29.12.2020 ordering their provisional release on execution of a bond for a sum of Rs.34,65,334/- and production of cash security/bank guarantee for a further sum of Rs.12,12,867/- towards redemption fine and penalty and on payment of applicable duty of Rs.9,43,411/-. It is this order directing provisional release that is challenged in this writ petition. Even while asserting that the imported goods have already been mutilated, the petitioner's counsel would state that if according to the respondents, the goods are serviceable items, the petitioner is ready to get them totally mutilated to the satisfaction of the customs authority and under their supervision.

4.The petitioner's counsel draws my attention to Section 24 of Customs Act, 1962, which reads as under:-

> "**24.Power to make rules for denaturing or mutilation of goods:-**
>
> The Central Government may make rules for permitting at the request of the owner the denaturing or mutilation of imported goods which are ordinarily used for more than one purpose so as to render them unfit for one or more of such purpose; and where any goods are so denatured or mutilated they shall be chargeable to duty at such rate as would be applicable if the goods had been imported in the denatured or mutilated form."

5.He would also point out that even though the central Government has not passed any Rules, pursuant to the rule making power set out in this provision, Courts have consistently applied the said provision in favour of the assessee. The petitioner's counsel draws my attention to the case laws enclosed in the typed set of papers, in which, it has been held that if the Revenue was of the view that the goods in question were serviceable, it was within their power to convert the same into waste and scrap, as requested by the assessee, and clear the goods thereafter.

6.I find that this proposition has been laid down not only by the various tribunals, but also by some of the High Courts. One instance is the decision reported in ***2008 (226) E.L.T.722 (Tri.Del),***

(Dewan Steel Industries Vs. C.C.Amristar).

7. The standing counsel would thereupon insist that the cost of mutilation should be borne only by the petitioner and that, the cost as estimated by the third respondent will have to be included in FOB. The petitioner does not have any objection to the course of action suggested by the third respondent.

8.When the petitioner is entitled to call upon the customs authority to mutilate the goods and clear them thereafter and when the petitioner has not invoked his right under Section 110 of the Customs Act, 1962, the third respondent could not have passed the impugned order. In this view of the matter, the impugned order is quashed. The respondents are directed to permit the petitioner to have the goods mutilated at the cost of the petitioner, but under the supervision of the third respondent. As agreed by the petitioner, the goods of mutilation will be included in FOB. The entire exercise will be concluded within a period of three weeks from the date of receipt of a copy of this order. The petitioner has to comply with the other formalities and the respondents will also facilitate the implementation of this order. The Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

rmi

Note : 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 Commissioner of Customs,
Custom House,New Harbour Estate,Tuticorin-628 004.

2.The Joint Commissioner of Customs,
Custom House,New Harbour Estate,Tuticorin-628 004.

3.The Assistant Commissioner of Customs (SIIB),
Custom House,New Harbour Estate,Tuticorin-628 004.

W.P.(MD)No.2124 of 2021
16.02.2021

(NA)CO
AP(19/02/2021) 3P 4C