



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 12.03.2021**

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WEB COPY

W.P(MD)Nos.3847, 3849, 3850 and 3851 of 2021

and

W.M.P. (MD)No.3071 of 2021 in W.P. (MD)No.3847 of 2021

and W.M.P. (MD)Nos.3073 and 3074 of 2021

in

W.P. (MD)No.3849 of 2021 and

W.M.P. (MD)No.3075 of 2021 in W.P. (MD)No. 3850 of 2021 and

W.M.P. (MD)Nos.3076 and 3077 of 2021 in W.P. (MD)No.3851 of 2021

M/s.Alba Industries Limited,
Rep., by its Managing Director,
S.Sukumar,
Registered office at "BMC House",
No.32/2, Halls Road, Egmore,
Chennai - 600 008. ... Petitioner in W.P.(MD)No.3847 of 2021

S.Sukumar,
Managing Director of
M/s.Alba Industries Limited,
Registered office at "BMC House",
No.32/2, Halls Road, Egmore,
Chennai - 600 008. ... Petitioner in W.P.(MD)No.3850 of 2021

M/s.Blue Metals Company Private Limited,
Rep. by its Director,
S.Masanam,
64, Thiruchendur Road, Kumbikulam,
Tirunelveli District. ... Petitioner in W.P.(MD)No.3849 of 2021

S.Masanam,
Director,
M/s.Alba Industries Limited,
No.32/2, Halls Road, Egmore,
Chennai - 600 008. ... Petitioner in W.P.(MD)No.3851 of 2021

Vs.

1.The Commissioner of Customs (Preventive),
No.1, Williams Road, Cantonment,
Trichy - 620 001.



2.The Joint Commissioner of Customs (Preventive),
Office of the Commissioner of Customs (Preventive),
No.1, Williams Road, Cantonment,
Trichy - 620 001.

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

4.Customs & Central Excise Settlement Commission,
Additional Bench, II Floor, Narmada Block,
Custom House, No.60, Rajaji Salai,
Chennai - 600 001.

... Respondents in all W.Ps

Common Prayer : Writ Petitions filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for records pertaining to the Impugned Order-in-Original No.02/2021, dated 29.01.2021 in file C.No.VIII/10/01/2020-Cus.Adjn., passed by the 2nd respondent herein in so far as the petitioner is concerned and to quash the same and further allow the petitioner to file Settlement Application before the Hon'ble Settlement Commission, Chennai, as provided under Section 127 B of the Customs Act 1962, the 4th respondent herein after the main Noticee pays the interest portion on the total duty already paid within a reasonable time as fixed by this Court to settle the case in final.

(In all W.Ps)

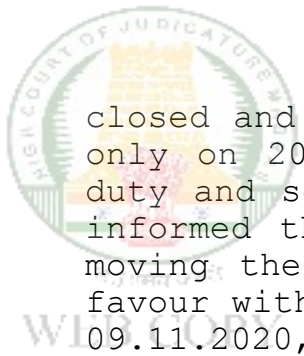
For Petitioner : Mr.Jayaraj.A.K

For Respondents : Mr.R.Aravindan

COMMON ORDER

Heard the learned counsel on either side.

2.Though writ petitions are four in number, the order impugned therein is one and the same. M/s.Blue Metals Company Private Limited is the petitioner in W.P.(MD)No.3849 of 2021 and M/s.Alba Industries Limited is the petitioner in W.P.(MD)No.3847 of 2021 and its director is the petitioner in the other writ petitions. The second respondent herein issued show cause dated 02.01.2020 to the petitioner's company and its directors proposing to levy duty with interest and penalty for diversion of due free imported capital goods, for which benefit of exemption under EOU scheme was availed. The petitioners were also given personal hearing notice dated 01.07.2020. The stand of the petitioners is that during the relevant time Covid-19 pandemic was prevailing, the office was



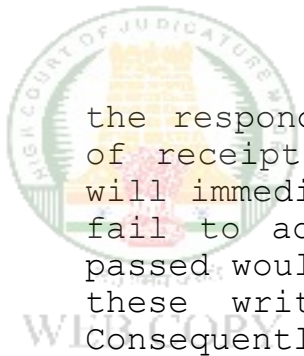
closed and the notice that was sent by registered post was received only on 20.07.2020. However, the petitioners remitted the entire duty and sought time to pay the interest portion. The petitioners informed the authorities that they propose to settle the issue by moving the settlement commission. The petitioners' request found favour with the second respondent. In fact vide communication dated 09.11.2020, the first respondent informed the petitioners to make available copy of the applications filed before the settlement commission. The petitioners were informed that the adjudication proceedings cannot be indefinitely kept pending. There was further exchange of correspondence between the parties. Finally on 04.01.2021, the first respondent informed the petitioners that unless the petitioners forward copy of the applications filed before the settlement commission on or before 15.01.2021, the case will be decided ex-parte. The petitioners submitted their reply dated 13.01.2021 informing the first respondent that they had already paid the duty liability amount of Rs.97,53,462/-. The petitioners informed the first respondent that they would pay the interest amount shortly and complete the proceedings through the settlement commission. The grievance of the petitioners is that without giving them reasonable time, the impugned orders dated 29.01.2021 came to be passed. The same is assailed in these writ petitions.

3.The learned standing counsel for the respondents submitted that the first respondent cannot be faulted. The proceedings have been pending for last several months. The petitioners were repeatedly informed that they should move the settlement commission at the earliest. The petitioners have been dragging on the proceedings and that is why the first respondent was constrained to pass the impugned orders.

4.Though I find considerable substance in the stand of the learned standing counsel, I am of the view that some more time could have been granted to the petitioners herein. This Court has to take notice of the fact that the petitioners had paid the entire duty liability amount. Covid-19 was prevailing and the impugned orders have also been passed without hearing the petitioners herein. Even now the petitioners state that within a period of six weeks from the date of receipt of a copy of this order, the petitioners would pay the interest amount as quantified by the authorities. This undertaking is recorded.

5.The petitioners' counsel also drew my attention to the order dated 22.06.2018 passed in W.P.(MD)No.12571 of 2018, where a learned Judge of this Court had granted time to the assessee to approach the settlement commission.

6.In view of the foregoing premises, the orders impugned in the writ petitions are quashed. The writ petitions are allowed. The petitioners are directed to pay the interest amount as quantified by



the respondents 1 to 3, within a period of six weeks from the date of receipt of a copy of this order. Thereafter, the petitioners will immediately move the settlement commission. If the petitioners fail to adhere to the time line stipulated above, the order now passed would stand automatically recalled and the orders impugned in these writ petitions would spring back to life. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

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Sub Assistant Registrar(CS)

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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 (Preventive),
No.1, Williams Road, Cantonment, Trichy - 620 001.
- 2.The Joint Commissioner of Customs (Preventive),
Office of the Commissioner of Customs (Preventive),
No.1, Williams Road, Cantonment, Trichy - 620 001.
- 3.The Commissioner of Customs,
Custom House, New Harbour Estate,
Tuticorin - 628 004.
- 4.Customs & Central Excise Settlement Commission,
Additional Bench, II Floor, Narmada Block,
Custom House, No.60, Rajaji Salai,
Chennai - 600 001.

4CC'S TO MR.A.K.JAYARAJ, ADVOCATE SR 11242

KM 20/05/2021
4P/9C

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12.03.2021