BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **19.08.2021**

CORAM

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.(MD)No.6860 of 2021
and
W.M.P(MD).No. 5272 of 2021

M/s.Aaditiya Aswin Paper Mills Private Limited,
Rep.by its Executive Director,
Aswin. ... Petitioner

-Vs-

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

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

Prayer: Writ Petition is filed under Article 226 of Constitution of India, to issue a Writ of Mandamus, directing the respondents to permit the petitioner to mutilate the imported goods viz., 88 packages viz., 46880 Kgs of Waste Paper - White Wet Strength Waste vide Bill of Entry No. 2647765 dated 06.02.2021, 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, on the basis of the petitioner's representation dated 16.03.2021.

For Petitioner : Mr.S.Navaneetha Krishnan

For Respondents : Mr.B.Vijay Karthikeyan
Standing Counsel

ORDER

Prayer sought for herein is for a Writ of Mandamus, directing the respondents to permit the petitioner to mutilate the imported goods viz., 88 packages viz., 46880 Kgs of Waste Paper - White Wet Strength Waste vide Bill of Entry No. 2647765 dated 06.02.2021, 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, on the basis of the petitioner's representation dated 16.03.2021.

2.That the petitioner is a paper mill and holder of IE Code No.3207001157 and manufacturer of Recycled Writing and Printing Papers. They had imported a consignment of waste paper - White Wet Strength Waste and filed Bill of Entry No. 2647765 dated 06.02.2021 for clearance of the above goods. The petitioner also claimed basic Customs Duty exemption under Sl.No.292A of Notification No.50/2017-Customs, dated 30.06.2017. According to the petitioner, the said imported consignment was classified under Customs Tariff subject Heading No.47079000. According to the petitioner, the petitioner is the actual user of the imported waste papers and it would be used for pulping purpose in the paper mill of the petitioner.

3.While that being so, the FHB officers of Customs House of Tuticorin, that is, the respondents, on examining the goods concerned, had entertained a doubt that the imported consignment is not waste papers, but 'Stock Lot Paper' classified under Chapter 48 and not eligible for the exemption claimed by the petitioner, and detained the cargo.

4.In view of the said doubt arising, and in order to release the goods, the petitioner has given a representation to the respondent on 16.03.2021, where, they sought for the release of the goods, as it is only a waste paper and in alternative, if the Department still is not convinced, the petitioner may be permitted to mutilate the consignment as envisaged under Section 24 of the Customs Act, 1962, under the supervision of the Customs authorities. Such kind of permission, atleast, may be given to the petitioner, therefore, seeking the aforesaid, the petitioner has given the said representation, dated 16.03.2021, however, since the same has not been considered and the goods have not been released, the petitioner has approached this Court by filing the present writ petition with the aforesaid prayer.

5.Heard Mr.S.Navaneetha Krishnan, learned counsel appearing for the petitioner, who would submit that, the petitioner is a paper mill and as a raw-material for the said paper mill for the pulping purpose, this waste papers were imported, and it has been properly declared as waste papers. Instead of releasing the goods by levying the appropriate customs duty, the respondent customs, since have raised a doubt as if that it is not a waste paper, it is a 'Stock Lot White quoted Paper' classified under Chapter 48, therefore, it is not eligible for any exemption, accordingly, on the alleged reasons, since they have seized the goods in question, the petitioner had made a request that, if at all, the customs Department still having the doubt over the goods in question, the petitioner may be permitted to mutilate the same, as the said procedure is available under Section 24 of the Customs Act, hence, such a request was made, since the same has not been considered, the petitioner having no other option, seeking indulgence of this Court to give suitable direction in this regard to the respondent customs.

6.However, the learned counsel appearing for the respondent customs, on instructions, by relying upon the averments made in the counter affidavit, would submit that, the goods in question is not waste papers as claimed by the petitioner but, it is a different item. Whether the said item is a permissible item to import or not, also to be examined, and based on which only, further action can be proceeded against the petitioner, and therefore, at this juncture, if at all the petitioner made any application or request to permit him to mutilate the goods in question, under Section 24 of the Act, that would be decided on merits and in this regard, if at all, the grievance of the petitioner is to consider the request of the petitioner as made in the representation dated 16.03.2021, the same would be considered, and orders would be passed thereon, within the time frame that may be stipulated by this Court, however, such a gesture to dispose the said representation, dated 16.03.2021, shall not be viewed that the respondent customs has accepted the case of the petitioner.

7.I have considered the said submissions made by the learned counsel appearing for both parties and have perused the materials placed before this Court.

8.It is the claim of the petitioner that, it is only a waste paper and it has not been mis-declared, therefore, the petitioner is entitled to get release of the goods by paying the proper customs duty, or else, in case, if the respondent raises any doubt still about the goods in question, the petitioner is ready to mutilate the same, and therefore, such permission can be granted to them under Section 24 of the Customs Act. If that is the claim of the petitioner, that can very well be considered by the respondent Customs Department and accordingly, the plea of the petitioner raised in the representation dated 16.03.2021 can be decided and disposed of in the manner known to law, within a stipulated period, on merits.

9.In that view of the matter, this Court is inclined to dispose of this writ petition with the following order:

> "that there shall be a direction to the respondents to consider the representation of the petitioner dated 16.03.2021, and pass orders thereon, on merits and in accordance with law, and in that process, if need arises, an opportunity of personal hearing can also be given to the petitioner and after affording such an opportunity, orders shall be passed

as indicated above by the respondents, within a period of four weeks from the date of receipt of a copy of this order."

10.With these directions, this writ petition is disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

PJL

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

+1 CC to M/s.B.VIJAY KARTHIKEYAN, Advocate (SR-26835[F] dated 19/08/2021)

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