IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 34822 of 2021

M/s. ACT Infraport Limited .... ***Petitioner***

Mr. Hardik Modh, Advocate

-versus-

Union of India and others .... ***Opposite Parties***

Mr. Radheyshyam Chimanka, Senior Standing Counsel
For Revenue Department

CORAM:
THE CHIEF JUSTICE
JUSTICE M.S. RAMAN

ORDER
01.11.2022

Order No.

06. 1. The grievance in the present writ petition is that final assessment orders have been passed by the Customs authorities in respect of Bills of Entry submitted by the Petitioner without following the mandatory provisions of the Customs Act, 1962 and the relevant Regulations which require compliance of the principles of natural justice and importantly, for the authority to pass a reasoned order.

2. When the present petition was heard on 14th March 2022, the following order was passed by this Court:

> "1. This matter is taken up through virtual/physical mode.
>
> 2. It is contended that while raising the demand for differential duty for 36 bills of entry referred to in Annexure-5 series (available from Page Nos.48 to 50),

> no final assessment order have been passed (although various dates have been mentioned) by following the principles of natural justice and/or any speaking order so as to have proper adjudication before the Appellate forum. It is further urged that most of the purported final assessment orders have been passed after the enforcement with effect from 14th August, 2018 of the Customs (Finalisation of Provisional Assessment) Regulations, 2018, which as per Regulation 6 sub-Regulation (3) specifically provide for passing of a speaking order after following of principles of natural justice.
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> 3. Issue formal notice for 18th April, 2022.
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> 4. Mr. Radheyshyam Chimanka, Senior Standing Counsel appears and waives notice on behalf of Opposite Party Nos.2 to 5. Four extra copies of the writ petitions be served on him within three working days.
>
> 5. Let an additional counter be filed in the light of the aforesaid factual contention.
>
> 6. Till the next date, no coercive steps shall be taken for recovery of the demand of differential duty qua the said 36 bills of entry.
>
> Issue urgent certified copy as per rules."

3. Pursuant to the above order, a counter affidavit has been filed on behalf of Opposite Party Nos.2 to 5 and rejoinder has also been filed by the Petitioner.

4. This Court has heard the submissions of Mr. Hardik Modh, learned counsel appearing for the Petitioner and Mr. Radheyshyam Chimanka, learned Senior Standing Counsel appearing for the Department.

5. Mr. Modh refers to one of the final assessment orders dated 19th September, 2019 in respect of the re-assessment of Bill of Entry No.475/HC/2016-17 dated 25th November, 2016 per vessel MV NANDINI. By the said communication, the Assistant Commissioner, Dhamra Customs Division, Dhamra informed the Petitioner that the aforementioned Bill of Entry had been "assessed finally" and it was determined that there was a short payment of Rs.35,54,251/- in respect of excess bunkers/stores consumed during the coastal voyage of the said vessel.

6. Mr. Modh refers to the Regulation 6 (3) of the Customs (Finalization of Provisional Assessment) Regulations, 2018 ('Regulations'), notified on 14th August, 2018 under Section 157 (d) read with Section 18 and Section 158 (2)(ii) of the Customs Act, 1962 which reads as under:

> "(3) Where the final assessment is contrary to the provisional assessment, the proper officer shall pass a speaking order following principles of natural justice."

7. Mr. Modh points out that not only was no hearing afforded to the Petitioner prior to finalizing the assessment but even the letter/order dated 19th September, 2019 does not provide the reasons for determining the short payment of duty.

8. On the other hand, Mr. Chimanka was unable to dispute the fact that there was non-compliance with the aforementioned Regulation 6 (3). However, his only contention was that the Petitioner has a remedy by way of an appeal.

9. Mr. Modh refers to the decision in ***M/s. Zuari Agro Chemicals Ltd. V. Union of India 2014 (307) ELT 874 (Bom)*** and submits that where the authority in question does not pass a reasoned order then the aggrieved party cannot be relegated to an appellate remedy. He submits that without reasons being provided in the order under appeal, the appeal would be a futile exercise.

10. Be that as it may, since there is obvious violation of the principles of natural justice and Regulation 6 (3) of the Regulations, the Court has no hesitation in setting aside the impugned letter/order dated 19th September, 2019 and remanding the matter to the Assistant Commissioner, Dhamra Customs Division, Dhamra for fresh adjudication after giving the Petitioner an opportunity of being heard and by passing a reasoned order. The orders in respect of each of the 36 bills of entry (enclosed as Annexure-5 series to the petition) are likewise set aside and are remanded to the Assistant Commissioner, Dhamra Customs Division for a fresh reasoned decision after hearing the Petitioner.

11. The matter will now be listed before the Assistant Commissioner, Dhamra Customs Division, Dhamra on 19th December, 2022 on which dated, the authorized representative of the Petitioner will remain present together with a downloaded copy of this order. The Assistant Commissioner, Dhamra Customs Division, Dhamra will then proceed with the matter and pass final reasoned orders of re-assessment of the aforementioned Bills of Entry (set out in Annexure-5 series to the writ petition) after hearing the Petitioner within a period of three months thereafter.

12. The writ petition is disposed of in the above terms.

(Dr. S. Muralidhar)
Chief Justice

(M.S. Raman)
Judge

S. Behera