IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.3540 of 2022

M/s.Olympic Cards Ltd
Rep.by its Managing Director
Mr.N.Mohammed Faizal,
195, N.S.C.Bose Road
Chennai 600 001. ...Petitioner

-Vs-

1.The Principal Chief Commissioner of Customs
60, Rajaji Salai, Customs House, Chennai 600 001

2.The Commissioner of Customs
Chennai-IV Commissionerate
Customs House, Chennai – 600 001.

3.The Assistant Commissioner of Customs
Arrear Recovery Cell, Chennai-IV Commissionerate
60, Rajaji Salai, Customs House, Chennai-600 001. ...Respondent

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the respondents to consider representation dated 13.03.2021 and grant 24 monthly equated installments for paying the dues i.e balance of duty interest fine and penalty imposed on the petitioner under order - in- Original No.O in O/ 79273 / 2021 dated 29.01.2021 passed by the 2nd respondent emanating from file Nos.S45 / 902 / 2006 -EPCG- EODC-CH- IV and S45 / 961 / 2009 -EPCF-EODC- CH-IV.

For Petitioner : Mr.B.Satish Sundar
For Respondent : Mr.Rajinish Pathiyil
Senior Panel Counsel

O R D E R

The prayer sought for herein is for a Writ of Mandamus directing the respondents to consider representation dated

13.03.2021 and grant 24 monthly equated installments for paying the dues i.e balance of duty interest fine and penalty imposed on the petitioner under order - in- Original No.O in O/ 79273 / 2021 dated 29.01.2021 passed by the 2nd respondent emanating from file Nos.S45 / 902 / 2006 -EPCG- EODC-CH- IV and S45 / 961 / 2009 -EPCF-EODC- CH-IV.

2. The petitioner has imported certain capital goods in the year 2006 and 2009 towards his business and in this regard, in order to get duty exemption under the Scheme envisaged by the Department of Foreign Trade, there was an export obligation issued to the petitioner and within the period provided for completing the export obligation since the petitioner has not fulfilled the export obligation, the duty exemption given or intended to be given to the petitioner was withdrawn and accordingly the Customs imposed duty as well as penalty and interest including redemption fine.

3. The said amount was quantified, according to the Customs, at Rs.51,94,977+ interest and penalty etc., Already the petitioner paid a sum of Rs.37,84,763/- on 31.05.2017 and some more amount to the extent of nearly about Rs.8,00,000/- had been paid in February 2022.

4. Therefore, what is the remaining balance in the heads of the remaining duty component as well as the interest and penalty, which may be between Rs.60 – 70 Lakhs still remains to be paid by the petitioner, for which the petitioner has made a request on 13.03.2021 to the respondents seeking for 24 equated installments starting from April 2021. However, the said request made by the petitioner having been received by the respondents, according to the petitioner, so far has not been considered and no order has been passed to that effect. Therefore, the petitioner has approached this Court seeking a direction to the respondents to consider the representation dated 13.03.2021 and grant 24 equated monthly installments to pay the remaining due.

5. Reiterating the afore stated, the learned counsel for the petitioner Mr.Satish Sundar seeks the indulgence of this Court to issue a direction by way of a Mandamus to consider the said request of the petitioner and to pass orders to that effect to enable the petitioner to pay the remaining due in equated installments.

6. However, Mr.Rajinish Pathiyil, learned Senior Panel Counsel appearing for the respondents would submit that, though the petitioner has made the said request on 13.03.2021, subsequently on 15.11.2021, a reminder letter has been issued by the Customs stating that there was a tax due as well as penalty including redemption fine and interest, which shall be paid, as the same has not been paid for long time. Since such a reminder was issued, it can be construed that the petitioner's representation dated 13.03.2021 having been considered, was rejected by the said reminder dated 15.11.2021.

7. I have considered the submissions made by the learned counsel for both sides and have perused the materials placed on record.

8. The petitioner has not disputed the duty imposed on the petitioner as well as the interest and the penalty component and is ready and willing to pay what are all the remaining amounts due. However, he only seeks equated monthly installments for which he made a request as early as on 13.03.2021.

9. However, the reminder issued by the respondent Customs dated 15.11.2021 does not say anything about the request of the petitioner seeking for equated monthly installments in his representation dated 13.03.2021. Therefore, it is clear that, the said request is still pending before the respondent Customs and the same has not been considered and decided.

10. 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 request of the petitioner dated 13.03.2021 and decide the same on merits and in accordance with law by taking into account the stand taken by the petitioner that he has already paid a considerable amount out of the duty and the remaining duty as well as interest and penalty, he is ready and willing to pay and he only seeks 24 equated monthly installments.

- In this regard, whatever possibility for granting such installments can be considered by the respondents and an order to that effect can be passed on merits and in accordance with law and if need arises, the petitioner can be given an opportunity of being heard and thereafter such an order can be passed within four weeks from the date of receipt of a copy of this order.

11. With the above directions, this writ petition is disposed of. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

KST

To

1.The Principal Chief Commissioner
of Customs, 60, Rajaji Salai,
Customs House, Chennai 600 001

2.The Commissioner of Customs
Chennai-IV Commissionerate
Customs House, Chennai-600 001.

3.The Assistant Commissioner of Customs
Arrear Recovery Cell, Chennai-IV
Commissionerate, 60, Rajaji Salai,
Customs House, Chennai-600 001.

+1 CC to Mr.B.Satish Kumar, Advocate sr 11331
+1 CC to M/s. Rajnish Pathiyil, Advocate sr 11769.

W.P.No. 3540 of 2022

PMK(CO)
SP(08/03/2022)