IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 25.02.2022

CORAM:

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

W.P.No.3890 of 2022
and W.M.P.No.4022 of 2022

Carboline Toolings India Pvt., Ltd.,
Rep by its Director
Plot No.64, Road No.1, CIE,
Gandhi Nagar,
Hyderabad - 500 037. ... Petitioner

Vs.

1.The Commissioner of Customs (Sea)
Customs House,
Rajaji Salai, Chennai - 600 001.

2. The Deputy Commissioner of Customs
Group 5, Customs House,
Rajaji Salai,
Chennai - 600 001. ... Respondents

Prayer: Petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Certiorari to call for the records on the file of the second respondent in reassessment issued through website order, dated 11.01.2022 in respect of Bill of Entry No.6708878, dated 16.12.2021 and quash the same.

For Petitioner : Mr.P.R.Krishnaraj

For Respondents : Mr.Rajinish Pathiyil
Senior Panel Counsel

ORDER

The prayer sought for herein is for a writ of certiorari, to call for the records on the file of the second respondent in reassessment issued through website order, dated 11.01.2022 in respect of Bill of Entry No.6708878, dated 16.12.2021 and quash the same.

2. The petitioner imported a machine called CNC Tool and Cutter Grinding Machine from Anca Manufacturing (Thailand) Ltd., Thailand under invoice, dated 10.11.2021.

3. Since the goods imported was originating from Thailand, it complies Origin criteria as per Rule 3 of the Customs Tariff (Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India) Rules, 2009, [in short "2009 Rules"].

4. Since the goods imported arrived at Chennai Port on 16.12.2021, the petitioner submitted the bill of entry to the Customs Automated System portal.

5. As the petitioner is entitled under the preferential tariff treatment, in view of the aforesaid 2009 Rules, which would attract only zero duty, he was expecting that the goods would be released by imposing only zero duty.

6. However, contrary to the expectation and against the Rules, the Assessing Authority has assessed the goods for duty on 11.01.2022 and quantified the duty plus interest, totally a sum of Rs.37,11,581/-.

7. According to the petitioner, the said assessment and imposing a duty is contrary to the 2009 Rules and despite this has been brought to the notice of the respondents since the same was not considered and in the meanwhile, since the goods imported attracts the demurrage charge everyday, as already one month was over, the petitioner in order to release the goods under protest paid the duty and the system generated assessment order was released, where no reasons have been disclosed, except the figure quantified for payment of custom duty. Hence the petitioner has approached this Court, challenging the same, on the ground that no assessment could be made without the speaking order and on the ground alone, the same is liable to be set aside.

8. Reiterating the aforestated, Mr.P.R.Krishnaraj, learned counsel appearing for the petitioner seeks indulgence of this Court.

9. However, Mr.Rajinish Pathiyil, learned Senior Panel Counsel appearing for the respondents would submit that, under Section 17(5) of the Customs Act, if any reassement is done under sub-section 4 of that Section, it is contrary to the self assessment done by the importer or exporter, the Assessing

Authority shall pass a speaking order on the reassessment within 15 days from the date of the assessment of the bill of entry or the shipping bill as the case may be.

10. Relying upon this provision, the learned Standing Counsel would submit that, since the assessment has been made on 11.01.2022, which is contrary to the self assessment of the importer, necessarily the assessing authority has to pass speaking order under sub-section 5 of Section 17 of the Customs Act, which exercise if they have not so far done, would be undertaken shortly and a speaking order would be issued to the petitioner.

11. He would also submit that, though under protest since the petitioner has paid the tax and released the goods, if once the speaking order is passed, he can work out his remedy by filing an appeal before the Appellate Authority.

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

13. Even though it was contended by the learned counsel appearing for the petitioner that, if any assessment is made without a speaking order, that assessment itself is bad in law and on that ground, that assessment itself can be set aside, this Court feels that, what is the reason actually for making the assessment which is contrary to the self assessment made by the petitioner is to be first unearthed, for which, the speaking order to be passed in this regard by the Revenue is necessarily to be obtained and this exercise also to be undertaken as mandated under sub-section 5 of Section 17 of the Customs Act, which has also been fairly submitted by the learned standing counsel, that they will soon issue the speaking order.

14. This Court having regard to the said factual matrix of the case is inclined to dispose of this writ petition with the following orders :

> "That there shall be a direction to the respondents to pass a speaking order, within a period of one week from the date of receipt of a copy of this order with regard to the assessment they have made through the impugned order, dated 11.01.2022, for which no reason so far has been given and once such order is passed and communicated to the petitioner, it is open to the petitioner to

work out his remedy against such order in the manner known to law.

15. With these directions and observations, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

Tsvn

To

1.The Commissioner of Customs (Sea)
Customs House,
Rajaji Salai, Chennai - 600 001.

2. The Deputy Commissioner of Customs
Group 5, Customs House,
Rajaji Salai, Chennai - 600 001.

+1cc to Mr.P.R.Krishnaraj, Advocate SR.No.12733
+1cc to Mr.Rajnish pathiyil, Advocate SR.No.12972

W.P.No.3890 of 2022

SJ(CO)
GN(21/03/2022)