IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2022

CORAM:

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.4420 of 2022
and WMP.No.4563 of 2022

M/s.Uniqeline
New No.14, 3rd Floor, Jaffer Syrang Street
Behind Collector's Office, Chennai-600 001
Rep. by its Proprietor Mr.A.Prabhakaran ..Petitioner

Vs

The Addl. Commissioner of Customs
(SEZ Cell, Air Cargo Commissionerate, Chennai-VII)
O/o.the Principal Commissioner of Customs
New Customs House, Air Cargo Complex
Meenambakkam,
Chennai-600 027 ..Respondent

Prayer : Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari to call for the records pertaining to the impugned exparte Order in Original No.60/2022-AIR dated 14.02.2022 passed by the respondent herein, in F.No.S.Misc.11/2021-SEZ Cell-ACC and to quash the same, in so far as, the said exparte impugned order has been passed by the respondent without affording an opportunity of personal hearing and also by not considering the reply dated 24.08.2021 furnished by the petitioner to the show cause notice dated 14.07.2021, which is in clear violation to the principles of natural justice.

For Petitioner :Mr.S.Baskaran
For Respondent :Mr.V.Sundareswaran,
Senior Standing counsel.

ORDER

The prayer sought for herein is for a writ of Certiorari to call for the records pertaining to the impugned exparte Order in Original No.60/2022-AIR dated 14.02.2022 passed by the respondent herein, in F.No.S.Misc.11/2021-SEZ Cell-ACC and to quash the same, in so far as, the said exparte impugned order has been passed by the respondent without affording an opportunity of personal hearing and also by not considering the reply dated 24.08.2021 furnished by the petitioner to the show cause notice dated 14.07.2021, which is in clear violation to the principles of natural justice.

2. On the basis of the Revenue intelligence information, Special Intelligence and Investigation Branch, Chennai Customs-III Preventive Commissionerate (SIIB) initiated investigation and conducted a detailed examination of the goods covered under Warehouse Bill of Entry No.1002606 dated 04.02.2020 filed by one space provider, viz., M/s.Timescan Logistics India Pvt. Ltd., operating their business at M/s.J.Matadee Free Trade Zone Pvt. Ltd., Sriperumbudur, on behalf of the importer M/s.Chindia Trading, Represented by its Proprietor K.Vijayakumar.

3. With regard to the afore stated, the Revenue i.e., Customs wanted to adjudicate against the petitioner who is the Customs Broker Licensee.

4. Even according to the Revenue, a notice dated 15.12.2021 had been issued for personal hearing, under which two dates have been given that either on 21.12.2021 or 27.12.2021, the petitioner or on his behalf somebody should appear for personal hearing.

5. That on 21.12.2021, the petitioner could not appear as they wanted to engage a counsel. Therefore, they engaged a counsel in whose favour vakalat was executed and accordingly, the counsel engaged was to appear on 27.12.2021 being the last date for such personal hearing as given by the respondent-customs department given on 15.12.2021. However, on 27.12.2021, the counsel engaged has developed some health issue, therefore, on 27.12.2021 morning, the counsel has sent an e-mail to the Revenue i.e., the concerned officer of the Customs stating that because of the health issue, he could not appear before the respondent on behalf of the petitioner/assessee on 27.12.20221 and therefore, he requested for a deferred date.

6. Thereafter, according to the learned counsel for the petitioner nothing was forthcoming and no communication had been received by the petitioner or the counsel and ultimately the Order in Original dated 14.02.2022 has been issued whereby the penalty has been imposed against the petitioner. Therefore, the said order has been challenged before this court in this writ petition on the ground of non giving of proper opportunity of being heard.

7. Reiterating the aforestated, the learned counsel appearing for the petitioner would contend that, if one more chance was given as requested by the petitioner’s counsel

through his e-mail dated 27.12.2021, certainly on the deferred date, either the petitioner or his counsel engaged would have appeared. However, such chance was not given and the request made by the petitioner’s counsel also whether has been considered or not is not known to the petitioner or his counsel, because nothing was forthcoming from them, till the receipt of the impugned order. Therefore, the learned counsel for the petitioner seeks indulgence of this court.

8. However, Mr.V.Sundareswaran, learned Senior Standing counsel appearing for the respondent/Customs has submitted that since the notice had already been given where not only the date 27.12.2021 was given as personal hearing date, but it was only an alternative date because 21.12.2021 also one of the dates, that was given to the petitioner for personal hearing. Therefore, either of the two dates could have been utilized properly by the petitioner or his counsel, however, for the reasons best known to them, the petitioner has not utilized the first date and even in respect of the second date, only communication by e-mail was sent only on the date of hearing. By that time, hearing was over and the respondent proceeded to pass the Order in Original. So the said plea raised by the petitioner that no opportunity was given or his request given at the last minute through the e-mail has not been considered, cannot be countenanced. Therefore, on that ground, it cannot be stated that the principles of natural justice is violated. Therefore, the impugned order does not require any interference from this court. He further submitted that if at all the petitioner is aggrieved over the impugned order, viz., Order in Original, they can very well can file an appeal before the appellate authority. Instead of going before the appellate authority on the merits of the case, he wanted to short circuit the issue, by filing the writ petition, alleging the reason that there is a violation of principles of natural justice.

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

10. The only ground raised by the petitioner is that, on 27.12.2021, the date on which the petitioner was supposed to appear for personal hearing, for the said purpose though advocate has been engaged by executing the vakalat on that day i.e., exactly on 27.12.2021, the counsel engaged has developed some health issue, therefore, he could not appear. Hence the counsel has sent a communication by e-mail requesting the Revenue to give a deferred date. However, the said request has not been considered and no date has been given.

11. In this regard, this court is not inclined to go into other aspects of the issue, as those aspects are the matters to be gone into by the appellate authority, if the petitioner chooses to file an appeal. However, insofar as the said request of the petitioner for giving one more deferred date for the personal hearing, on the ground of health issue of the counsel who has been engaged in this regard who supposed to appear on 27.12.2021, which was the date admittedly given by the respondent for personal hearing as alternative date for personal hearing by the Revenue, this court is of the view that such one more chance of deferred date could have been given by the Revenue. In the absence of the same, this court feels that the matter can be remitted back to the respondent for giving such an opportunity to the petitioner to appear for personal hearing.

12. Hence, this court is inclined to dispose of this writ petition with the following orders:-

(i) That the impugned order is set aside and the matter is remitted back to the respondent for reconsideration. By reconsidering the same, a notice specifying the date for personal hearing within a period of two weeks from the date of receipt of a copy of this order, shall be issued to the petitioner and also to the counsel in the registered e-mail address and on receipt of the said intimation, on the date to be fixed in this regard by the Revenue, either the petitioner or his counsel shall appear without fail and after hearing the petitioner or his counsel, the respondent/customs can proceed to pass final orders on merits.

(ii) It is made clear that on the date intimated for personal hearing, if either the petitioner or his counsel do not appear, it is open to the respondent/customs to proceed in accordance with law and to confirm the present order unmindful of the same having been set aside by the present order.

13. The writ petition is disposed of on the above directions. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

The Addl. Commissioner of Customs
(SEZ Cell, Air Cargo Commissionerate, Chennai-VII)
O/o.the Principal Commissioner of Customs
New Customs House, Air Cargo Complex
Meenambakkam,
Chennai-600 027

+1 CC to Mr.S.Baskaran, Advocate sr 13574
+1 CC to Mr.V.Sundareswaran, Advocate sr 13694.

W.P.No.4420 of 2022

SS(CO)
SP(05/05/2022)