



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.03.2022

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.5228 of 2022
and
W.M.P.No.5321 of 2022

M/s.Arun Industries
Represented by its Partner
Mr.P.Thiyagarajan
Door No.434/0 Thirumangalam,
Rajapalayam NH Road Thirali Village, T.
Pudhupatti Post Thirumangalam Taluk,
Madurai - 625 704.

... Petitioner

Vs

1. The Additional Commissioner of Customs (Group-2)
Custom House, No.60, Rajaji Salai,
Chennai - 600 001.
2. The Joint Commissioner of Customs (Group -2)
Customs House, No.60, Rajaji Salai,
Chennai - 600 001.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari to call for the records pertaining to the impugned Order-in-Original made 87702/2022 dated 31.01.2022 issued by the 1st respondent and quash the same.

For Petitioner : Mr.G.Derrick Sam

For Respondents : Mr.A.P.Srinivas
Senior Standing Counsel

ORDER

The prayer sought for herein is for a writ of certiorari to call for the records pertaining to the impugned Order-in-Original No.87702/2022 dated 31.01.2022 issued by the 1st respondent and quash the same.



2. The respondent Customs authorities issued a show cause notice against the petitioner on 26.12.2014 following which Order-in-Original in Order-in-Original No.47191/2016 was passed by the 1st respondent in May 2016. As against the said Order-in-Original, appeal was filed before the Appellate Authority by the petitioner which was also decided against the petitioner by order dated 14.09.2016 in Order-in-Appeal No.C.Cus II No.863/2016.

3. As against the order passed by the Appellate Authority, further appeal has been filed by the petitioner before the CESTAT on 22.12.2016, where, admittedly the appeal is pending.

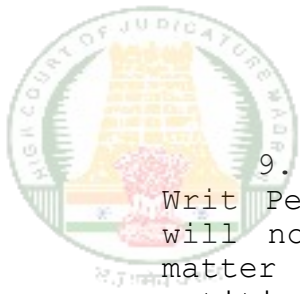
4. Subsequently, a personal hearing notice was sent on 01.12.2021 and the petitioner has given a reply on 06.12.2021. Thereafter, once again Order-in-Original No.87702 of 2022 has been passed by the 1st respondent on 31.01.2022, of course pursuant to the same show cause notice dated 26.12.2014.

5. Therefore, challenging the order dated 31.01.2022, this writ petition has been filed.

6. Heard Mr.G.Derrick Sam, learned counsel appearing for the petitioner, who has reiterated the same and would submit that, as against the Order-in-Original, when appeal was filed, appeal also was decided against the petitioner, against which, when appeal is filed and it is pending before the CESTAT once again arising out of the same show cause notice, the present Order-in-Original dated 31.01.2022 since has been passed, it shall not stand in the legal scrutiny and it shall be interfered with and set aside.

7. Heard Mr.A.P.Srinivas, learned Senior Standing Counsel appearing for the respondents, who, on instruction, would submit that, arising out of the same show cause notice dated 26.12.2014, unmindful of the Order-in-Original as well as Order-in-Appeal passed which is the subject matter before the CESTAT in appeal filed on 22.12.2016, the 1st respondent now since has passed the present Order-in-Original dated 31.01.2022 which is impugned herein, a suitable order may be passed, he contended.

8. Having considered the said submissions made by the learned counsel appearing for both sides and having gone through the records, this Court has no hesitation to hold that, the impugned Order-in-Original dated 31.01.2022 will not stand in the legal scrutiny because of the earlier Order-in-Appeal before the CESTAT arising out of the same show cause notice dated 26.12.2014. Therefore, in that view of the matter, the impugned order is liable to be set aside.



9. With the result, the impugned order is set aside and the Writ Petition is allowed. Setting aside of this impugned order will not prejudice the right of other parties to agitate the matter before the CESTAT, where the appeal filed by the petitioner dated 22.12.2016 is pending. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

Sgl

To

1. The Additional Commissioner of Customs (Group-2)
Custom House, No.60, Rajaji Salai,
Chennai - 600 001.
2. The Joint Commissioner of Customs (Group -2)
Customs House, No.60, Rajaji Salai,
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SR-II[co]
NSK/13/05/2022