IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.6363 of 2022
W.M.P.Nos.6441 & 6443 of 2022

M/s.V.K.Industries Corporation Ltd.,
Represented by its Director,
Ms.Kairavi Mehta ... Petitioner

Vs.

The Additional Commissioner of Customs (Gr.4),
Chennai II Commissionerate,
Custom House, 60 Rajaji Salai,
Chennai - 600 001. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records pertaining to impugned order-in-original no.87509/2022, dated 19.01.2022 issued by the respondent and quash the same.

For petitioner : Mr.Hari Radhakrishnan

For Respondent : Mr.A.P.Srinivas
Senior Standing Counsel
Customs, Central Excise & Service

ORDER

The petitioner has filed this petition to issue a Writ of Certiorari to call for the records pertaining to impugned order-in-original no.87509/2022, dated 19.01.2022 issued by the respondent and quash the same.

2. The case of the petitioner is that the petitioner company is engaged in the business of importing and trading in Hot Rolled Steel Plates, Steel Sheets etc., thus, the petitioner entered into a contract dated 23.12.2015 with POS-SEA PTE LTD., Singapore, for import of "Hot Rolled Steel Plate" and an

irrevocable Letter of Credit (LoC) was executed on 28.12.2015. Thereafter, on 05.02.2016 the Director General of Foreign Trade had issued a Notification No.38/2015-2020 under Section 3 of the Foreign Trade (Development and Regulation) Act, 1992, fixing a Minimum Import Price (MIP) of USD 500 per MT for 173 HS Codes under Chapter 72. The said notification placed restriction on the import of "Hot Rolled Steel Plate". However, the petitioner had executed the Letter of Credit much earlier before the notification, registered the irrevocable 'LoC' with the office of Additional Director General of Foreign Trade, Mumbai on 12.02.2016. The petitioner company filed the bill of entry bearing no.4281364 dated 17.02.2016 for clearance of "Hot Rolled Steel Plate". The Bill of entry was assessed by the concerned officer to a duty of Rs.96,25,331/- by classifying the goods under CTH 7208 5110, and the said duty was paid and goods were permitted for home consumption. Thereafter, the respondent has issued a Show Cause Notice dated 28.02.2019 under Section.124 of the Customs Act, 1962, alleging that the petitioner company had imported the goods below the rate of minimum import price which is in accordance with notification no.38/2015-2020 dated 05.02.2016. Thereafter, on 27.10.2021 petitioner company appeared before the respondent and submitted that letter of credit was executed prior to the date of notification, goods are exempted from the condition of minimum import price. The respondent was not satisfied with the explanation given by the petitioner company and thus, passed the impugned order-in-original no.87509 dated 19.01.2022, holding that the goods are liable for confiscation and imposing redemption fine of Rs.80,00,000/- under Section 125 of the Customs Act, 1962 and also imposing a penalty of Rs.80,00,000/- under Section 112(a) of the Customs Act, 1962. Aggrieved by the said impugned order, the present Writ Petition has been filed by the petitioner for the above relief.

3. Though very many grounds have been raised, learned counsel for the petitioner submits that as against the order passed by the original authority, there is affective appeal before the Commissioner of Customs Appeal in terms of under Section 128(1) of the Customs Act. Hence, this Court may permits the petitioner to file appropriate appeal before the Commissioner of Customs Appeal, Customs House, 5 th floor, Chennai, in terms of under Section 128(1) of the Customs Act.

4. In view of the aforesaid submissions, this Court without expressing any opinion on the merits of the case, inclined to grant permission to the petitioner to file appropriate appeal before the appellate authority in terms of Section 128(1) of the

Customs Act, 1962, filing the writ petition and pending before the registry is excluded for the purpose of limitation and the petitioner is directed to file appeal within a period of two weeks from the date of receipt of a copy of this order within the statutory period, if any appeal is filed the appellate authority is directed to pass appropriate orders in accordance with law.

5. Accordingly, this writ petition is disposed of with the aforesaid direction. No costs. Consequently, connected miscellaneous petitions are closed.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

tri/skt
To

The Additional Commissioner of Customs (Gr.4),
Chennai II Commissionerate,
Custom House, 60 Rajaji Salai,
Chennai - 600 001.

+1cc to Mr.Hari Radhakrishnan, Advocate Sr.19053
+1cc to Mr.A.P.Srinivas, Advocate Sr.17577

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srg 26/04/2022