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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2022

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.7331 of 2019

and

W.M.P.Nos.8009 & 8010 of 2019

(Through Video Conferencing)

M/s.A.K.S.Alloys Private Limited,
Represented by its Director,
Narendra Kumar Kothari,
At "Arihant Plaza", New No.193/232,
Walltax Road, Chennai - 600 003.

... Petitioner

Vs.

The Assistant Commissioner of Customs,
Group 4, Office of the Commissioner of
Customs (Port-Import),
No.60, Rajaji Salai,
Chennai - 600 001.

... Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned Order-in-Original No.18594 of 2012 dated 29.03.2012 passed by the respondent and to quash the same as arbitrary, non-est because not served on the petitioner and further direct the respondent to pass an order after affording an opportunity of being heard to the petitioner.

For Petitioner : Mr.M.A.Mudimannan

For Respondent : Mr.V.Sundareswaran

Senior Panel Counsel

ORDER

Mr.Sundareswaran, learned Senior Panel Counsel takes notice on behalf of the respondent.

2. The petitioner has challenged the impugned Order-in-Original No.18594 of 2012 dated 29.03.2013 passed by the respondent.



3. It is the case of the petitioner that the petitioner had shifted the place of business. However, the respondent has proceeded to issue Show Cause Notice dated 06.07.2011 and adjudicated the same without serving a copy of the Show Cause Notice or the personal hearing notice.

4. In paragraph 10 of the affidavit filed in support of the present writ petition, it is the specific case of the petitioner that the petitioner has updated the new address in the IEC Registration maintained by the Customs Department in the year 2008.

5. It is therefore submitted that the impugned order passed by the respondent knowledge of which was brought to the attention of the petitioner after the recovery proceedings were initiated is unsustainable.

6. Opposing the prayer, the learned Senior Panel Counsel for the respondent would submit that the writ petition is uploaded inasmuch as the impugned order has been passed as early as 29.03.2013 and the writ petition was filed in the year 2019 on 12.03.2019 ie., after lapse of almost six years. It is therefore submitted that the writ petition is liable to be dismissed.

7. The learned Senior Panel Counsel for the respondent has drawn attention to Paragraph 6 of the counter affidavit which reads as under:-

"6. The respondent most respectfully states that in so far as the allegations contained in para 6 & 7 are concerned, the address of the petitioner for the subject Bill of Entries was taken from the customs EDI system which is the same the one declared by the importer at the time of filing of Bill of Entries. Moreover the petitioner has requested for waiver of Show Cause Notice (issued on 06.07.2011) thus implying that the petitioner was very well aware of the adjudication proceedings. The petitioner failed to inform the department or its officers regarding the change of address to the notice of the adjudicating authority."

8. The reading of the above indicates that the Show Cause Notice and the personal hearing notice have been issued to the petitioner at the address declared in the Bills of Entry in Kilpauk.

9. The respondent has not disputed the fact that the petitioner had changed the address in 2008 and updated the same in the IEC Registration maintained by the Customs Department.



10. It is noticed that the Impugned Order pertains to Bills of Entry filed during October-November, 2004 and January-February, 2005 loing before the petitioner shifted place of business and changed address in 2008.

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11. There is a manifest Violation of Principles of Natural Justice, while passing the impugned order inasmuch as the proceedings have been initiated without proper service of notice to the petitioner.

12. Considering the same, I am inclined to quash the impugned order and remit the case back to the respondent, to pass a fresh order on merits and in accordance with law within a period of three months from the date of receipt of a copy of this order subject to such safeguard that may be in force considering Covid-19 pandemic.

13. This Writ Petition stands disposed of with the above observations. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

rgm/arb

To

The Assistant Commissioner of Customs,
Group 4, Office of the Commissioner of
Customs (Port-Import),
No.60, Rajaji Salai,
Chennai - 600 001.

+1cc to Mr.V.Sundareswaran, Advocate SR.No.6682
+1cc to Mr.K.Jayachandran , Advocate SR.No.7271

W.P.No.7331 of 2019

and

W.M.P.Nos.8009 & 8010 of 2019

SV(CO)
GN(18/02/2022)