IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.07.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.4106 of 2023

Luker Electric Technologies Private Limited,
Rep. by its Sr.Manager-Commercial, Mr.K.Radhakrishnan,
34/1912-C1, Mathathil Lane,
BTS Road, Edapally,
Kochi – 682 024. ... Petitioner

Vs.

The Commissioner of Customs,
Chennai – II (Import),
Custom House,
No.60, Rajaji Salai,
Chennai – 600 008. ... Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records pertaining show cause notice DIN 20221273MX0000333F1B dated 06.12.2022 on the file of the Respondent and quash the same.

For Petitioner : Mr.J.V.Niranjan

For Respondent : M/s.Anu Ganesn,
Junior Panel Counsel

O R D E R

The petitioner has challenged the impugned Show Cause Notice dated 06.12.2022 bearing reference no. DIN 20221273MX0000333F1B.

2. The specific case of the petitioner is that the petitioner had imported goods and filed Bill of Entries on various dates as mentioned below:-

Sl.No	***Bill of Entry No***	***Date***
1.	4456010	18.12.2017
2.	4560910	26.12.2017
3.	4456616	18.12.2017
4.	4457573	18.12.2017
5.	4561726	26.12.2017
6.	4702167	06.01.2018
7.	4909604	22.01.2018
8.	4909722	22.01.2018
9.	4909726	22.01.2018
10.	4909727	22.01.2018
11.	4909728	22.01.2018
12.	4909768	22.01.2018
13.	4909898	22.01.2018
14.	4909905	22.01.2018
15.	4909933	22.01.2018

3. It is submitted that by mistake the petitioner had failed to avail the benefit of Notification No.91 of 2017 - Customs dated 14.12.2017 and therefore, the petitioner had filed an appeal before the Appellate Commissioner against the assessment and respective seven (7) Bill of Entries out of fifteen (15) Bill of Entries mentioned above which came to be allowed by the Appellate Commissioner vide order dated 18.06.2018 bearing reference in F.No.C3-II/110 to 112, 128 to 131/O/2018-SEA.

4. These appeals filed by the petitioner were allowed by way of remand. Paragraph 7 of the aforesaid Order in Appeal is reproduced below:-

> *" 7. In view of the foregoing discussions, I direct the lower authority to recall the Impugned Bills of Entry and re-assess the same after examining the eligibility of the benefit of the aforesaid Notification afresh. The appellant is also directed to produce the relevant documents at the time of re-assessment to justify the averment that the subject goods are LED lights."*

5. The specific case of the petitioner is that if the respondents were aggrieved by the order 18.06.2018 passed by the Appellate Commissioner, it was open for the respondents to file further appeal before CESTAT. It was not open for the respondents to issue show-cause notice under Section 28(4) of the

Customs Act read with Section 124 of the Customs Act in contravention of the order of the Appellate Commissioner. Hence, it is submitted that the writ petition deserves to be allowed.

6. The learned counsel for the petitioner on the other hand has placed reliance on the decision of the Court in **N.C.Alexender** vs **The Commissioner of Customs, Chennai,** 2022 (381) ELT 148.

7. I have considered the arguments of the learned counsel for the petitioner and the learned Junior Panel Counsel for the respondent. The decision rendered by the Court in **N.C.Alexender** vs **The Commissioner of Customs, Chennai,** 2022 (381) ELT 148 relates to the Jurisdiction of DRI, to issue show-cause notice as a proper officer, under the Customs Act, 1962. In this case, the show-cause notice has been issued to the Commissioner of Customs II. The Court in **N.C.Alexender** vs **The Commissioner of Customs, Chennai,** 2022 (381) ELT 148 has also noted that the apparent defect point out earlier by the Hon'ble Supreme Court has been cured by the amendment to the provisions of the Customs Act, 1962 in the Finance Act, 2022. Therefore, the decision of the Court in **N.C.Alexender** vs **The Commissioner of Customs,**

Chennai, 2022 (381) ELT 148 is irrelevant. The petitioner should therefore file a reply to the impugned show-cause notice. Therefore, there is no merits in the submission of the learned counsel for the petitioner. The Court is of the view that the present writ petition is premature. It is therefore liable to be dismissed. The petitioner is therefore given liberty to file a reply to the impugned show-cause notice that has been issued to the petitioner.

8. In view of the above observation, the present writ petition is dismissed with liberty to the petitioner to file a reply within a period of 30 days from the date of receipt of a copy of this order. The respondent shall dispose the impugned show-cause notice along with the remand order of the Appellate Commissioner. The respondent shall thereafter pass orders on merits and strictly in accordance with law. No costs.

17.07.2023

skr
Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation : Yes / No

C.SARAVANAN, J.

skr

To

The Commissioner of Customs,
Chennai – II (Import),
Custom House,
No.60, Rajaji Salai,
Chennai – 600 008.

W.P.No.4106 of 2023

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