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W.P.No.5529 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2023

CORAM :

The HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. No.5529 of 2020 and W.M.P.
Nos.6467, 6469 and 24516 of 2020

Manoj Kumar Dhariwal

... Petitioner

VS

1.The Assistant Commissioner of Customs,
Group-5B, Custom House,
60, Rajaji Salai,
Chennai – 600 001.

2.The Assistant Commissioner of Customs,
Revenue Recovery Unit,
Chennai II Commissionerate,
Custom House,
60, Rajaji Salai,
Chennai – 600 001.

3.The Branch Manager,
Indian Overseas Bank,
Sowcarpet Branch,
No.143, NSC Bose Road,
Sowcarpet,
Chennai – 600 079.

4.The Branch Manager,
Corporation Bank,
Chennai Mint Branch,
378, Mint Street,
Sowcarpet, Chennai – 600 079.

... Respondents



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Prayer: Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorari to call for the records connected with file S49/126/2002 Gr.5B and to quash the order in original No.2136/2004 Gr.5B dated 11.05.2004 passed by the first respondent holding herein the same as invalid and non-est in the eyes of law and passed in gross violation to the principles of natural justice.

For Petitioner : Mr.N.Viswanathan

For Respondents : Mr.Indrajit representing counsel for
Mr.A.P.Srinivas,
Senior Standing Counsel for R1 and 2

ORDER

This writ petition has been filed, challenging the Order in Original dated 11.05.2004 passed by the first respondent under which the petitioner has been called upon to pay the differential duty of Rs.2,22,427/- in respect of the portable emergency lamp, Model PRL 786, imported by the petitioner in the year 2002.

2.The petitioner has challenged the impugned order in original on the following grounds:

a)Despite steps having been taken by the respondents to recover the differential duty in the year 2006, the respondents, after receipt of the



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reply from the petitioner in the year 2006, did not proceed further with regard to the differential duty, which is claimed under the impugned order in original.

b)The recovery notice and the attachment letter were issued by the second respondent only on 14.02.2020 and immediately after coming to know the same, the petitioner has approached this Court and therefore, there is no delay on his part.

c)In respect of the very same goods, which were imported by the petitioner, namely, emergency lamps, other importers have got benefit as seen from the Order in Appeal dated 30.07.2004 passed by the Commissioner of Customs (Appeals). Therefore, according to the petitioner, there cannot be any discrimination and the petitioner must also be given the very same benefit.

d)The decision of the Madras High Court dated 02.02.1959 in the case of Rayalseema Constructions vs Deputy Commercial Tax Officer, reported in 1959 AIR (Madras) 382, the judgment of the Hon'ble Supreme Court dated 24.11.1965 in the case of Deputy Commercial Tax Officer vs. Rayalseema Constructions, reported in 1966 (17) STC 505 and the decision of the Andhra Pradesh High Court in the case of



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Electronics Corporation of India Ltd. vs. Union of India, reported in 2018

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(361) E.L.T. 22 (A.P.) have been relied upon by the petitioner. According to the petitioner, the above judgments support his case.

3. Denying the contentions of the petitioner, a counter affidavit has been filed by the respondents 1 and 2. According to them, since the Order in Original has been served on the petitioner by the respondents in all the available means as prescribed under Section 153 of the Customs Act and the defaulter has failed to use the opportunity within the stipulated time, filing a writ petition seeking an opportunity to avail an appeal remedy against the Order in Original is time barred and is an attempt to only further delay the process of recovery. They have reiterated that the petitioner is liable to pay the differential duty as claimed in the impugned order in original.

4. Learned counsel for the petitioner reiterated the contents of the affidavit filed in support of this writ petition and also relied upon the decisions referred to supra in support of the petitioner's contention.



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5.Per contra, learned Senior Standing Counsel appearing for the respondents 1 and 2 reiterated the contents of the counter affidavit filed by the respondents 1 and 2 before this Court and would submit that the writ petition is not maintainable.

6.Learned counsel for the petitioner contends before this Court that the petitioner was not aware of the impugned Order in Original dated 11.05.2004. According to him, even though a recovery notice was issued to the petitioner in the year 2006, the same was replied by the petitioner immediately on receipt of the same. But thereafter no further steps were taken by the respondents to recover the alleged differential duty, which is claimed in the impugned Order in Original. He would also submit that the petitioner was not served with the impugned Order in Original and prior notice was also not received by him. The petitioner has also stated that after receipt of the recovery notice dated 14.02.2020, he has immediately approached this Court by filing this writ petition. The petitioner also contends that in respect of the very same product, namely, emergency lamps, the Commissioner of Customs (Appeals) by its order dated 30.07.2004, involving 68 importers, had granted relief by allowing the Appeals and therefore, the petitioner cannot be discriminated and the



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same benefit should also be given to him. Learned counsel for the petitioner has also relied upon the decision of the Constitutional Courts, referred to supra, including the decision of this Court dated 20.11.2019 in the case of I.Lakshmanan vs. The Deputy Commissioner of Customs and another in W.P. No.2439 of 2007 in support of the petitioner's contention that he is not liable to pay the differential duty as claimed in the impugned Order in Original. He would submit that none of the decisions have been given due consideration under the impugned Order in Original and therefore, the impugned Order in Original has to be quashed for non application of mind to the aforementioned decisions as well as the order dated 30.07.2004 passed by the Commissioner of Customs (Appeals) in a batch of identical cases.

7. Admittedly, the impugned Order in Original is dated 11.05.2004. The petitioner has filed this writ petition only in the year 2020. Under the impugned Order in Original, the petitioner has been directed to pay the differential duty of Rs.2,22,427/-. Since the petitioner has approached this Court belatedly, this Court is of the considered view that after a lapse of almost sixteen years from the date of the impugned Order in Original, he must be put on terms for quashing the impugned Order in Original



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dated 11.05.2004 and for reconsideration of the same, on merits and in accordance with law, based on the decisions relied upon by the learned counsel for the petitioner as well as the order dated 30.07.2004 passed by the Commissioner of Customs (Appeals), involving a batch of identical cases.

8.No prejudice would be caused to the respondents if such a direction is issued as the respondents will be getting revenue in view of the deposit made by the petitioner pursuant to the directions given by this Court today.

9.For the foregoing reasons, this writ petition stands allowed by directing the petitioner to deposit with the first respondent a sum of Rs.2,22,427/- (Rupees Two lakhs twenty two thousand four hundred and twenty seven only) within a period of four weeks from the date of receipt of a copy of this order. On receipt of the same, within the stipulated time, the impugned Order in Original dated 11.05.2004 shall stand quashed and the matter is remanded back to the first respondent for fresh consideration, on merits and in accordance with law. The first respondent shall pass final orders, after giving due consideration to the decisions



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relied upon by the petitioner in this writ petition, referred to supra as well as the order dated 30.07.2004 passed by the Commissioner of Customs (Appeals) in a batch of 68 cases, within a period of eight weeks thereafter. Consequently, connected W.M.Ps stand closed. No costs.

14.02.2023

Neutral Citation: Yes/No
Speaking/Non Speaking order
Index: Yes/No
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To

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Group-5B, Custom House,
60, Rajaji Salai,
Chennai – 600 001.

2. The Assistant Commissioner of Customs,
Revenue Recovery Unit,
Chennai II Commissionerate,
Custom House,
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