IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2023

CORAM

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.No.20256 of 2023

M/s.Hindalco Industries Limited,
Represented by its Authorised Signatory,
Mr.Suman Kumar,
Ahura Cente, 1st Floor, B Wing,
Mahakali Caves Road, Andheri East,
Maharashtra – 400 093. ... Petitioner

Vs.

1.Union of India,
Represented by Secretary, Ministry of Finance,
North Block, New Delhi – 110 001.

2.The Deputy Commissioner of Customs (BRC-DBK),
Customs House, 60, Rajaji Salai, Chennai,
Tamil Nadu – 600 001.

3.The Commissioner of Customs, Chennai – IV,
Customs House, 60, Rajaji Salai, Chennai,
Tamil Nadu – 600 001.

4.The Assistant Commissioner of Customs (BRC-DBK),
Arrear Recovery Cell (Chennai – IV),
Customs House, 60, Rajaji Salai, Chennai,
Tamil Nadu – 600 001. ...

Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records relating to the Order in Original No.82428/2021 dated 27.03.2021 passed by the 2nd respondent and quash the same.

For Petitioner : Ms.R.Charulatha for Lakshmi Kumaran and Sridharan Attorneys

For Respondents : Mr.T.Ramesh Kutty Senior Standing Counsel for GST & Customs

ORDER

This writ petition has been filed seeking to quash the impugned order in Original No.82428 of 2021 dated 27.03.2021, passed by the 2nd respondent.

2. The case of the petitioner is that the second respondent has passed the impugned order dated 27.03.2021, demanding recovery of duty drawback without affording any opportunity to the petitioner for personal hearing and to file a reply.

3. Ms.R.Charulatha, learned counsel appearing for the petitioner would fairly submit that the personal hearing notice was issued by the 2nd respondent *vide* letter dated 01.03.2021, mentioning three dates for personal hearing *viz.,*08.03.2021, 09.03.2021 and 10.03.2021. However, in all the above said dates, the company was not in operation as the Government of Maharashtra closed the company due to COVID-19 pandemic. During the second wave of COVID-19, when the company was closed, the impugned order came to be passed on 27.03.2021 and despatched on 31.03.2021. Therefore, the said impugned order came to be passed without affording any opportunity to the petitioner to file a reply. Thus, the petitioner had no opportunity to receive the personal hearing notice and appear in person and file a reply. Hence, the learned counsel for the petitioner would submit that the same would amount to violation of principles of natural justice and prays to set aside the impugned order.

4. On the other hand, Mr.T.Ramesh Kutty, learned counsel appearing for the respondent would fairly submit that even though the personal hearing notice was issued on 01.03.2021, when COVID-19 pandemic was in its peak, the petitioner is not entitled for the relief as sought for, because, they have not furnished any details of the receipt of the foreign exchange, subsequent to the export of the goods. Further, he would submit that the petitioner is supposed to pay the tax amount within 30 days from the date of issue of show cause notice or produce the evidence towards the receipt of the goods.

5. However, in the present case, no such evidence was produced. Therefore, the said impugned assessment order came to be passed. Further, the fact remains in the present case is that the impugned order came to be passed in the month of March, 2021 and the dates mentioned for personal hearing are also in the midst of March, 2021 i.e., when the COVID-19 was at peak in Maharashtra, where all the

industrial organisation have been closed.

6. Under these circumstances, the show cause notice was issued and it was received by the person who was on the duty on that date. Further, the concerned person who is dealing with the matter had passed away and nobody was available to deal with the matter, since the entire factory was closed.

7. Heard the learned counsels for both the sides and also perused the records available on record.

8. Further, this Court is not inclined to go into the aspect whether the petitioner is entitled for duty drawback or the provision of intimation to the authorities concerned with regard to the receipt of the foreign exchange, etc,. These are the disputed facts and the same have to be decided by the respondent, after affording an opportunity to petitioner and consideration of reply to be filed thereof by the

petitioner.

9. Therefore, this Court is inclined to set aside the impugned order dated 27.03.2021 and remit the matter back to the respondent for reconsideration, in which case, the respondent shall provide an opportunity of personal hearing to the petitioner to file a reply and thereafter pass appropriate orders in accordance with law.

Accordingly, the writ petition stands allowed. No cost.

08.11.2023

veda
Internet:Yes
Index : Yes / No
Speaking order/Non-Speaking order
Neutral Citation : Yes / No

To

1.Union of India,
Represented by Secretary, Ministry of Finance,
North Block, New Delhi – 110 001.

2.The Deputy Commissioner of Customs (BRC-DBK),
Customs House, 60, Rajaji Salai, Chennai,
Tamil Nadu – 600 001.

KRISHNAN RAMASAMY, J.

veda

3.The Commissioner of Customs, Chennai – IV,
Customs House, 60, Rajaji Salai, Chennai,
Tamil Nadu – 600 001.

4.The Assistant Commissioner of Customs (BRC-DBK),
Arrear Recovery Cell (Chennai – IV),
Customs House, 60, Rajaji Salai, Chennai,
Tamil Nadu – 600 001.

W.P.No.20256 of 2023

08.11.2023