BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.04.2023

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

W.P.(MD) No.6265 of 2023
and
W.M.P.(MD) No.5951 of 2023

M/s.Black Gold Technologies,
Rep., by its Proprietor, Mr.Anuj Bansal,
No.UP 58, Maurya Enclave,
Pitampura, Delhi-100 034. .. Petitioner

Vs.

1.The Joint Commissioner of Customs,
O/o. The Commissioner of Customs,
Custom House, New Harbour Estate,
Tuticorin-628 004.

2.The Deputy Commissioner of Customs (ADJN),
O/O. The Commissioner of Customs,
Custom House, New Harbour Estate,
Tuticorin-628 004. .. Respondents

Prayer :- Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order-in-original No.TUT-CUSTM-PRV-JC-36/2022 (DE NOVO) dated 30.12.2022 passed by the first respondent in C.No.VIII/10/10/2020-ADJN and quash the same and further direct the first respondent to pass fresh orders after giving an opportunity of personal hearing to the petitioner.

For Petitioner	:	Mr.Hari Radhakrishnan
For Respondents	:	Mr.N.Dilipkumar Senior Standing Counsel

ORDER

The writ petitioner has approached this Court for the issue of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order-in-original No.TUT-CUSTM-PRV-JC-36/2022 (DE NOVO) dated 30.12.2022 passed by the first respondent in C.No.VIII/10/10/2020-ADJN and quash the same and further direct the first respondent to pass fresh orders after giving an opportunity of personal hearing to the petitioner.

2. It is the case of the petitioner that they are engaged in the business of manufacturing rubber crumbs used in road laying and making other rubber allied products. The petitioner would submit that in the course of business, they have filed nine bill of entries on various dates for clearances of goods described as "used rubber tyre cut in two pieces"

for the tune of Rs.48,91,401/- which involves duty amount of Rs.15,15,359/-. The products have been imported from United States. The petitioner would submit that there is a restriction in the import of used tyres except those which have a cut in the bead wire. The officers of the SIIB, Tuticorin Customs was of the opinion that the goods in question did not have the one cut in the bead wire and they therefore, seized the goods. Statement was thereafter recorded from the Proprietor of the petitioner concern and also from the Customs Broker whereby, complete mutilation was suggested to avoid any controversy. However, it was to no avail.

3. The petitioner would submit that despite his cooperation and support, SIIB entertained the view that the goods cannot be released and after concluding the investigation, the respondents had issued seven show cause notices. Meanwhile, the petitioner filed W.P.(MD) No.1242 of 2020 seeking provisional release of the goods in terms of Section 110A of the Customs Act, 1962. The said writ petition was allowed and by order dated 25.08.2020, provisional release of the sealed goods was

ordered, which was also confirmed by a Division Bench of this Court in W.A.(MD) No.863 of 2020. The first respondent, thereafter proceeded to adjudicate the five show cause notices. The petitioner vide their letter dated 19.02.2021, submitted a reply and requested to cross examine the mahazar witnesses, who were present during the seizure proceedings. This is on account of the fact that the officers of the SIIB, on the basis of visual examination, come to the conclusion that the goods did not have one cut in the bead wire. The first respondent had fixed a personal hearing directing the petitioner concern to appear for the personal hearing on 19.02.2021. During the hearing, request for cross examination was reiterated and the personal hearing was fixed on 16.06.2021. On the said date, the petitioner once again requested the respondents to cause examination of goods by a third party expert and also for cross examination. However, without granting request for cross examination, the first respondent adjudicated all the eight show cause notices, passed orders in O.A.Nos.5 to 11 of 2021 dated 29.06.2021 and imposed penalty asking the petitioner to pay a sum of Rs.1,08,27,985/-. The petitioner, thereafter filed W.P.(MD) Nos.13225 and 13226 of 2021 before this Court once again that they were not permitted to cross examine the mahazar witness. By order dated 11.04.2022, the matter was remitted back to the respondents for *de novo* consideration. The petitioner by letter dated 15.05.2022, requested the Commissioner to direct the first respondent to fix a personal hearing. Eight months from the date of the order in W.P.(MD) Nos.13225 and 13226 of 2021, the second respondent has sent a letter dated 13.12.2022 calling the petitioner to submit the documents as directed by this Court on or before 23.12.2022. This letter, according to the petitioner was received by them on 24.12.2022 and therefore, they were unable to produce the documents on the date fixed. Thereafter, no personal hearing or opportunity was given and the earlier order dated 29.06.2021 was confirmed. The writ petitioner is aggrieved by the fact that he has not been afforded an opportunity of personal hearing.

4. The learned counsel for the petitioner also reiterated the contents of the affidavit and on the fact that the petitioner was not afforded personal hearing, since the notice was not served upon him.

5. The second respondent has sent a letter dated 13.12.2022 in and by which the second respondent had issued a notice to the petitioner calling upon them to produce all the documents to substantiate that the imported goods do not fall within the purview of restrictions in the foreign trade policy. This notice has been received by the petitioner at their address at New Delhi on 17.12.2022. Despite receiving the said notice and being put on notice about the submission of documents before 23.12.2022, no steps were taken in this regard. Though the petitioner had denied receipt of the said letter, the documents filed by the respondents would believe the said statement.

6. The learned Senior Standing Counsel for the respondents would bring to the notice of this Court the observation of this Court in the earlier round of litigation viz., W.P.(MD) Nos.13225 and 13226 of 2021, wherein this Court had observed as follows:

> *"16. In this case, the import is from the United States of America. It is not clear why the import has been made through Tuticorin Port, in the tip of the*

Peninsula in the Bay of Bengal. If the petitioner's case is that the import was made for their factory in Rajasthan, the petitioner would have chosen other Ports, which are nearer to Rajasthan either in Gujaraj or in Maharashtra or in Goa or in Kerala on the Western Coasts. This needs to be properly explained by the petitioner. If the petitioner indeed operates a factory in Rajasthan, it is open for the petitioner to file a copy of the GST Registration of the factory and details of documents to substantiate that the petitioner had indeed manufactured the Rubber Crumbs and Granules and sold to various Contractors/statutory authorities engaged in laying of roads. These are the documents which the petitioner is required to produce before the authorities to substantiate that the imported goods do not fall within the purview of restrictions in the Foreign Trade Policy 2015-2020."

7. That apart, despite receiving notice, the petitioner has deliberately not come forward to submit the document and without doing so, they once again approached this Court to grant further time. The petitioner is only stalling for time.

8. Heard the learned counsel on either side.

9. As pointed out by the learned Senior Standing Counsel for the respondents, the petitioner, who now claims that he has all the documents and seeks one more indulgence to submit the documents to the respondents, has not complied with the earlier order in its letter and spirit. This Court had clearly and categorically directed the petitioner to submit all documents which they rely upon and it was for this reason, the impugned order was quashed and the matter was remitted back. The first respondent was directed to pass orders within a period of three months. The petitioner was given the concession of relying on any document and collateral as evidence available with them and the first respondent was directed to pass orders after perusing the same and by applying the principles of preponderance of probability. However, the petitioner has not complied with the said direction. Further, the petitioner has an appellate remedy which he has not availed. A reading of the impugned order would clearly set out the fact that the petitioner has not filed a copy of the GST registration certificate at Rajasthan and though the first

respondent has called upon the petitioner to produce the documents to substantiate their case, the petitioner has not cared to supply the details. The impugned order can be appealed before the Commissioner of Appeals within a period of 60 days. Considering the fact that this period has come to an end, the time taken in prosecuting this writ petition shall be waived and shall not be taken into account for calculating the period of limitation.

10. This Writ Petition is dismissed with the above liberty. No costs. Consequently connected miscellaneous petition is closed.

05.04.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes

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P.T.ASHA, J.

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