BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.08.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.16702 of 2014
and
M.P.(MD)No.1 of 2014

M/s.Gaunir Impex Private Limited,
represented by its Director,
Niren Champaklal Ajmera,
No.27.29, Mirza Street,
Mumbai-400 003. ... Petitioner

Vs.

1.Union of India,
Ministry of Finance,
Department of Revenue,
represented by its Chairman,
Central Board of Excise and Customs,
159-A, North Block,
New Delhi-110 001.

2.The Commissioner of Customs,
Customs House,
New Harbour Estate,
Tuticorin-628 004.

3.The Assistant Director General,
(Directorate of Revenue Intelligence),
Chennai. ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a ***Writ of Certiorari,*** to call for the records pertaining to the impugned order passed by the 2nd respondent in C.No.VIII/10/04/2009 AJN, Order No.38/2014, dated 30.07.2014 and to quash the same.

For Petitioner	:	Mr.Joseph Prabhakar for Mr.K.Prabhakar
For R-1	:	Mr.S.Pillaimonicantan
For R-2	:	Mr.R.Nandakumar Senior Standing Counsel assisted by Mr.Prabhu Junior Standing Counsel
For R3	:	Mr.R.Suresh Kumar Additional Government Pleader

ORDER

This writ petition is filed for writ of Certiorari, to quash the impugned order dated 30.07.2014 passed by the 2nd respondent.

2. The petitioner is a company incorporated under the provisions of the Companies Act. The petitioner has imported fabrics under seven Bills of Entry during the period from August 2010 to October 2010. The petitioner was in need of "Duty Free Replenishment Certificate" license to avail tax exemption while clearing the aforesaid fabrics from Tuticorin Port. One Murugan was the petitioner's Custom House Agent in Thoothukudi and he informed that one Ramesh Daswani has a DFRC license, dated 02.10.2005,

along with TRA, which could be used to get duty exemption for 275000 SQM. Hence, the petitioner had purchased the said license and thereafter, imported the goods. A show cause notice, dated 15.01.2009, was issued alleging that the DFRC license was actually issued for import of cotton processed fabrics of GSM 95+/-10%, but it has been used to avail the import duty benefit for the import dyed woven polyester fabrics. The petitioner has submitted a reply on 19.08.2010, requesting to grant personal hearing and also to fix the date for cross examination. Since the same was not granted, again, the petitioner submitted a request on 23.10.2010, for personal hearing as well as cross examination but the respondents refused personal hearing as well as cross examination. Hence, the petitioner alleges that there is violation of principles of natural justice.

3. The respondents 2 and 3 have filed counter affidavit stating that the petitioner has not specifically requested for cross examination, vide letters, dated 19.08.2010 and 23.10.2010. Even if the petitioner's request is taken, the cross examination will not yield any new thing and it may not help the petitioner as well. Therefore, the respondents submitted that there is no violation of principles of natural justice. The respondents further submitted that

the respondents have granted personal hearing and issued summon to 26 persons and allowed the petitioner to cross examine the said 26 persons, hence the allegation that the respondents had not granted opportunity of cross examination is incorrect.

4. On perusal of the order, it is seen that only three persons have attended the personal hearing, rest of them did not respond to the summons. It is also seen that the petitioner has specifically requested for cross examination in the letter dated 23.10.2010 and the relevant portion is extracted hereunder:

> *"We refer to our letter dated 19/08/2010 wherein we had made a preliminary submission and also requested for cross-examination of the persons mentioned therein. Accordingly, we had requested for adjournment.*
>
> *We have since not received any communication to our said letter dated 19/08/2010, we therefore once again enclose our letter dated 19/08/10 and request you to allow cross-examination and fix the hearing date."*

5. The petitioner has circulated the list of persons, which the petitioner wants to cross examine which is extracted hereunder:

"i. Mr. Gopal Choudhry
ii. Mr. Ramesh Daswani
iii. Mr. Deepak Bajaj
iv. Mr. Ramchandra Bhoite
v. Mr. Bharat Hiralal

vi. Mr. Ramchandran Karbhari Sonawane
vii. Mr. Kiren Dattaram Bane viii. Mr. Sharad Gaekwad
ix. The Officers of the JDGFT, Mumbai who have issued the said DFRC.
x. The Officers of Customs at Nhava Sheva who were instrumental in verifying, registering and issuing TRA in respect of the said DFRC.
xi. The Officers of Customs at Tuticorin who allowed clearance of the consignments imported by us."

6. However, the learned Counsel appearing for respondents submitted that as far as the Serial Nos.9 to 11 are concerned, the petitioner has mentioned designation but has not mentioned the name of the official, hence such request cannot be considered. This Court is of the view that such contention of the respondents cannot be entertained, since the official who was serving at that point of time is the appropriate person and the respondents are well aware of such persons rather than petitioner.

7. The next contention raised that was raised by the respondents is that the petitioner is having an alternate remedy. This Court is of the view that this writ petition is pending from 2014 onwards and at this point of time, the petitioner cannot be directed to file appeal.

8. Moreover it is seen that the penalty is imposed under Section 114A, wherein the penalty can be imposed based on the suppression of facts,

mis-statement, collusion. When an element of criminality is alleged on the petitioner, then the petitioner is entitled to personal hearing along with cross examination. When the petitioner has specifically sought for cross examination by giving a list of persons, denying opportunity of cross examination is clear violation of principles of natural justice. Therefore, this Court is remitting the matter back to the authorities. The authorities shall grant personal hearing as well as the authorities shall allow cross examination especially to the list of persons which the petitioner has mentioned in the list of persons. The petitioner is at liberty to submit any fresh list of persons whom the petitioner wants to cross examine. The enquiry shall be completed within a period of six months from the date of receipt of a copy of this order.

9. With the above said observation and directions, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

25.08.2023

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

To

The Assistant Director General,
(Directorate of Revenue Intelligence),
Chennai.

S.SRIMATHY, J.

Tmg

W.P.(MD).No.16702 of 2014

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