IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.08.2024

CORAM

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P.No.577 of 2022

M/s.Sai Exports
Represented by its Proprietor,
Mr.Mahesh K.Bafna ... Petitioner

Vs

The Assistant Commissioner of Customs(Group-3),
Custom House,
No.60, Rajaji Salai,
Chennai 600 001. ... Respondent

Prayer : Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondent to issue speaking order in respect of Bills of Entry Nos.4536759 dated 03.02.2014, 4009030 dted 06.12.2013, 9559768 dated 13.03.2013, 4467386 dated 27.01.2014, 4124412 dated 19.12.2013, 3913316 dated 26.11.2013, 3914005 dated 26.11.2013, 5151831 dated 09.04.2014, 5695265 dated 03.06.2014, 5791746 dated 13.06.2014, 5562443 dated 21.05.2014, 5562440 dated 21.05.2014, 5890198 dated 23.06.2014, 5949182 dated 28.06.2014, 6322725 dated 04.08.2014, 5636471 dated 28.05.2014, 6454312 dated 16.08.2014, 6720157 dated 10.09.2014, 7698942 dated

15.12.2014, 9120787 dated 065.05.2015, 9741154 dated 30.06.2015, 2111887 dated 03.08.2015 dated 2670655 dated 22.09.2015 on the basis of the request letter dated 20.07.2020 and reminders dated 02.09.2020, 05.10.2020, 19.02.2021, 10.03.2021, 07.04.2021, 14.04.2021, 06.07.2021 & 02.09.2021 as per Section 17(5) of the Customs Act, 1962 within time frame

For Petitioner : Mr.s.Murugappamn

For Respondent : Mr.J.Vasu
Junior Standing Counsel
for Customs & C.E. & GST

**ORDER**

This writ petition has been filed for the Mandamus to issue speaking order in respect of Bills of Entry.

2. The petitioner appears to be importer of goods and filed the subject Bill of Entries wherein the assessment has been completed contrary to self-assessment made by the petitioner in the Bill of Entries. Under these circumstances, the petitioner has sent a representation asking

the respondent to pass speaking orders. However, no speaking order has been passed. Hence, this writ petition has been filed.

3. The respondent in the counter has stated that the writ petition is liable to be dismissed and that the petitioner has an alternate remedy under Section 121(b) of the Customs Act, 1962. '

4. In this connection, a reference was made to the decision of the Hon'ble Supreme Court in ***Assistant Collector of Central Excise, Chandan Nagar, West Bengal vs. Dunlop India Limited & Ors.***(1985) 1 SCC 260, wherein it has been held as follows:-

> " Article 226 is not meant to short-circuit or circumvent statutory procedure. It is only where statutory remedies are entirely ill-suited to meet the demand of extraordinary situations, as for instance where the very vires of the statue is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But then the Court must have good and sufficient reason to bypass the alternative remedy provided by the statute. Surely matters

> involving the revenue where statutory remedies are available are not such matters. We can use take judicial notice of the fat that the vast majority of the petitions under Article 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. This practice certainly needs to be strongly discouraged”.

and therefore, this writ petition is liable to be dismissed.

5. Having considered the arguments by the learned counsel for the petitioner and the learned Junior Standing counsel for the respondents, I am of the view that the petitioner deserves a chance in the light of Section 17(5) of the Customs Act, 1961. As per Section 17(5) of the Customs Act, 1962, where any re-assessment done under sub-section (4) is contrary to the self-assessment by an importer or exporter, the proper officer shall pass a speaking order on the re-assessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be. Section 17(5) of the Customs Act, 1962 reads as under:-

(5) Where any re-assessment done under sub-section (4) is contrary to the self-assessment done by the importer or exporter 8 *** and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re-assessment in writing, the proper officer shall pass a speaking order on the re-assessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.

Explanation.—For the removal of doubts, it is hereby declared that in cases where an importer has entered any imported goods under section 46 or an exporter has entered any export goods under section 50 before the date on which the Finance Bill, 2011 receives the assent of the President, such imported goods or export goods shall continue to be governed by the provisions of section 17 as it stood immediately before the date on which such assent is received.]

6. Therefore, this writ petition deserves to be allowed. It is accordingly allowed. No costs.

13.08.2024

Index: Yes/ No
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**C.SARAVANAN,J.**

kkd

**To**

The Assistant Commissioner of Customs(Group-3),
Custom House,
No.60, Rajaji Salai,
Chennai 600 001.

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