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Writ Petition No.7098 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 21/10/2024

C O R A M

THE HONOURABLE Mr.JUSTICE KRISHNAN RAMASAMY

Writ Petition No.7098 of 2024

a n d

W.M.P.Nos.7941 and 7942 of 2023

Mahavir Trading Company

rep. By its Proprietors

Mr.Vinod Mehta.

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Petitioner

Vs

1. The Deputy Commissioner of Customs
Group – III, Chennai II Commissionerate
No.60 Rajaji Salai
Chennai 600 001.

2. The Assistant Commissioner of Customs
Group III Chennai III Import Commissionerate
Custom House, No.60 Rajaji Salai
Chennai 600 001.

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Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India
praying for the issuance of a writ of certiorari to call for the records
pertaining to the impugned order in Original No.84507/2021 dated
24/5/2021 by the first respondent and quash the same.



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For petitioner ... Mr.G. Derrick Sam
For respondents ... Mr.G.Meganathan
Jr.Panel Counsel

ORDER

This writ petition has been filed to quash the impugned order dated 24/5/2021 passed by the first respondent in Original No.84507/2021.

2. The facts of the case in a nutshell are as under:-

The petitioner is running a business of import and trading household articles including Ceramic Mug. As per Anti-Dumping Notification No.04/2018-Cus (ADD) dated 21/2/2018, Anti-Dumping Duty was imposed for “Ceramic Tableware and Kitchenware, excluding knives and toilet items” under Section 9 A of the Customs Tariff Act, 1975. Goods contained in S.Nos.7, 8 and 11 of the Bill of Entry No.5360436 dated 26/2/2018, Anti-Dumping Duty is leviable for which the petitioner had paid Rs.2,14,980/- towards Anti-Dumping Duty including IGST. But, Anti-Dumping Duty has been demanded for goods covered under S.Nos.7, 8 and 11, by way of impugned order. Hence, the petitioner has come forward with the instant writ petition.

3. Heard Mr.G.Derrick Sam, learned counsel for the petitioner and



Mr.G.Meganathan, Junior Panel Counsel for the respondents.

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4. The learned counsel appearing for the petitioner submitted that show cause notice has been issued beyond the limitation period of two years prescribed in Section 28 of the Customs Act, 1962. Demand of Anti-Dumping Duty for the very same items, amount to double taxation.

5. The learned counsel appearing for the petitioner further submitted that the first respondent has imposed penalty under Section 112 (a) and Section 114 A of the Customs Act, 1962. As per proviso to Section 114 A of the Customs Act, 1962, if penalty is being levied under this Section, no penalty can be levied either under Section 112 of Section 114 of the Customs Act, 1962. The impugned order has also imposed redemption fine of Rs.19,666/- under Section 125 of the Customs Act, 1962.

6. The learned Standing counsel appearing for the respondents filed counter affidavit and accepted the plea of the petitioner that Anti-Dumping Duty was already paid and demand was wrongly made by the Customs Department.

7. Perused the materials available on record.



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8. On a bare reading of the impugned order, it came to know that show cause notice dated 30/9/2020 has been issued and personal hearing has been offered on 18/2/2021 and 29/4/2021, however, the same were not received by the petitioner. Vide, letter, dated 10/1/2024, the second respondent has temporarily granted waiver for Alert No.50831 dated 22/11/2023 till 3/4/2024. The grievance of the petitioner is that he has received the copy of the order from the second respondent on 8/1/2024. Since the above said facts have not been disputed by the respondents, this Court is of the considered view that there is no liability on the part of the petitioner, since he has already paid the Anti-Dumping Duty.

9. In the result, this writ petition is allowed and the impugned order dated 24/5/2021 passed in Order-in-original No.84507/2021 by the first respondent is hereby quashed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

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mvs.

Index : Yes / No

Neutral Citation: Yes/No

KRISHNAN RAMASAMY,J



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