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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **25.03.2024**

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

Writ Petition No.10371 of 2022
&
W.M.P.No.10089 of 2022

M/s.V.K. Industrial Corporation Ltd.
Represented by its Director
Ms. Kairavi Mehta
43, Olympic Warehouse, Red Hill Road,
Kadapakkam Ponneri
Chennai-600 103 ... Petitioner

-vs-

The Additional Commissioner of Customs (Gr.4)
Chennai II Commissionerate, Imports
Custom House, 60 Rajaji Salai
Chennai 600 001. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari to call for the records pertaining to impugned order-in-original no.88320/2022 dated 28.02.2022 issued by the respondent and quash the same.

For Petitioner : Mr.L.Gokulraj
for Mr.Hari Radhakrishnan

For Respondent : Ms.Anu Ganesan,
Junior standing counsel

ORDER

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The petitioner is engaged in the business of import of hot rolled steel plates and steel sheets. In course of business, the petitioner had entered into a contract dated 28.12.2015 with Burwill Resources Limited, Hong Kong, for import of the above mentioned goods at USD 305 and 335. In relation to such import, the petitioner had submitted an irrevocable letter of credit on 02.01.2016 in favour of the supplier.

2. The Director General of Foreign Trade issued Notification No.38/2015-2020 dated 05.02.2016 (Notification No.38) under Section 3 of the Foreign Trade (Development and Regulation) Act 1992, fixing the minimum import price of USD 500 per MT in relation to 173 HS Codes under Chapter 72 of the Customs Tariff Act. The said notification contained an exemption in respect of imports under letters of credit submitted prior to the date of the notification subject to conditions. The petitioner had applied for registration of the transaction on 18.02.2016 and such registration was effected on 02.03.2016.

3. In the above facts and circumstances, a show cause notice was

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issued to the petitioner on 06.08.2021. Such show cause notice is said to have been replied to on 11.09.2021. The impugned order was issued thereafter on 28.02.2022.

4. Learned counsel for the petitioner invited my attention to Notification No.38 and submitted that paragraph 2 thereof exempts imports under letters of credit submitted before the date of notification subject to paragraph 1.05(b) of the Foreign Trade Policy, 2015-2020. He further submits that the petitioner applied for registration in compliance with paragraph 1.05(b) on 18.02.2016, which is within the 15 day period prescribed in paragraph 1.05. After pointing out that the petitioner cannot be held responsible for the belated registration on 02.03.2016, he contends that the petitioner has a good case on merits. As regards the decision making process, he refers to the show cause notice and the petitioner's reply thereto. By referring to the registration dated 02.03.2016, learned counsel also points out that it is recorded therein that the registration was made in terms of paragraph 1.05 of the Foreign Trade Policy. After pointing out that the petitioner's reply was received by the respondent, as evidenced by the

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acknowledgement at page 55 of the typed set, he submitted that it was recorded in the impugned order that the importer neither appeared for personal hearing nor replied to the show cause notice.

5. Ms.Anu Ganesan, learned junior standing counsel, made submissions in response. She pointed out that the petitioner's reply to the show cause notice is not available in the records of the respondent. She further submitted that the petitioner was provided three opportunities for personal hearing on 16.02.2022, 18.02.2022 and 22.02.2022 and that the petitioner failed to attend any of these hearings. On the merits of the dispute, she contended that paragraph 1.05(b) of the Foreign Trade Policy requires that the irrevocable commercial letter of credit should be registered with the jurisdictional Regional Authority (RA) within 15 days from the date of the notification. Since the petitioner did not comply with this requirement, she submits that the impugned order contains no infirmity.

6. The petitioner has placed on record the reply dated 11.09.2021 and

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the purported acknowledgement of receipt thereof at page 55 of the typed set of papers. In the reply, the petitioner has referred to Notification No.38 and to the registration of the relevant letter of credit with the Director General of Foreign Trade (DGFT). Turning to the impugned order, it is recorded as under in paragraph 7 thereof:

> *"7. An opportunity of Personal Hearing was given to importer to appear on 16.02.2022, 18.02.2022 and 22.02.2022. Till date, the importer has neither appeared for Personal hearing nor replied to the Show Cause Notice. In view of the same, the case is decided ex-parte based on merits available on records."*

The above extract discloses that the respondent decided to proceed *ex-parte* on the basis that the importer had neither appeared for personal hearing nor replied to the show cause notice. As indicated earlier, the reply of the petitioner to the show cause notice along with the acknowledgement is on record. Even proceeding on the assumption that such reply was not received by the respondent for any reason, the impugned order becomes unsustainable

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in the face of such reply and the contents thereof.

7. It should also be recognized that that the petitioner has placed on record not only Notification No.38 but also the irrevocable letter of credit dated 02.01.2016 and evidence that the petitioner applied for registration on 18.02.2016, which is within the stipulated 15 day period. In these circumstances, it is just and necessary that the petitioner be provided an opportunity.

8. Therefore, the impugned order is quashed and the matter is remanded to the respondent for reconsideration. The petitioner is permitted to re-submit the reply dated 11.09.2021 along with all supporting documents to the respondent within 15 days from the date of receipt of a copy of this order. Upon receipt thereof, the respondent is directed to provide a reasonable opportunity to the petitioner, including a personal hearing, and thereafter issue a fresh order within two months from the date of receipt of the petitioner's reply.

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9. W.P.No.10371 of 2022 is disposed of on the above terms. Consequently, connected miscellaneous petition is closed. No costs.

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Index : Yes/No

Internet : Yes/No

Neutral Citation : Yes/No

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To

The Additional Commissioner of Customs (Gr.4)
Chennai II Commissionerate, Imports
Custom House, 60 Rajaji Salai
Chennai 600 001.

SENTHILKUMAR RAMAMOORTHY J.

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