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W.P.No.9071 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.04.2024

CORAM:

THE HONOURABLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.9071 of 2024
and W.M.P.Nos.10083 & 10084 of 2024

M/s.Mahaveer NX,
137/IAI, Kosappur Road,
Theeyampakkam, Madhavaram,
Chennai-600 060,
Represented by its Proprietor,
Mr.Kamalesh Kumar.

...Petitioner

Vs.

The Principal Commissioner of Customs,
Chennai Preventive Customs Commissionerate,
Custom House, No.60, Rajaji Salai,
Chennai-600 001.

... Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records connected with order in original no.105211 of 2024 dated 22.02.2024 passed by the respondent and quash the same for having been passed in gross violation to the principles of natural justice and contrary to law.

For Petitioner : Mr.N.Viswanathan



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For Respondent : Mr.K.Mohanamurali,
Senior Standing Counsel

ORDER

An order dated 01.03.2024 is assailed *inter alia* on the ground that principles of natural justice were violated.

2. The petitioner is engaged in the business of importing and trading in various types of decorative balloons. Such goods were imported by classifying the same under Customs Tariff Heading 40169590 and claiming exemption from payment of basic customs duty under applicable notifications. The petitioner states that upon presentation of the bills of entry, the goods were cleared and that no objections were raised even pursuant to an audit in relation to the relevant bills of entry. According to the petitioner, the registered place of business was shifted from the original address to No.137/IAI, Kosappur Road, Theeyampakkam, Madhavaram. Therefore, the petitioner states that no notices were received prior to the issuance of the impugned order. As regards the impugned order, it is submitted that the same was served on the petitioner's customs handling agent.



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3. Learned counsel for the petitioner invited my attention to the Importer-Exporter Code (IEC) Certificate issued after the petitioner's address was changed. He also referred to the communication dated 10.03.2023 by which the petitioner informed the Deputy Commissioner of Customs about the change of address. By pointing out that the impugned order was issued after said letter was received by the Deputy Commissioner, learned counsel submits that the impugned order is vitiated on that count. Even otherwise, learned counsel submits that the goods imported by the petitioner were ordered to be confiscated and a redemption fine was imposed in relation thereto. Learned counsel contends that this was beyond the jurisdiction of the Principal Commissioner of Customs while exercising jurisdiction under Section 124 of the Customs Act, 1962 (the Customs Act) especially in view of the fact that the petitioner had possession of the relevant goods. Learned counsel also contended that sub-section (4) of Section 28 of the Customs Act was not liable to be invoked in the facts and circumstances.

4. Mr.K.Mohanamurali, learned senior standing counsel, accepts notice for the respondent. He submits that the change of address was not communicated to the Principal Commissioner of Customs, Preventive



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Commissionerate to whom the matter was transferred.

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5. The petitioner has placed on record the IEC Certificate and the letter dated 10.03.2023. Both these documents indicate the current address of the petitioner. On examining the impugned order, the said order has been communicated to the petitioner at 111 to 113, Kanniamman nagar, Annex Vadaperumbakkam, Chennai-600 060 and not to the address specified in the above mentioned documents. It is also crucial to notice that the letter dated 10.03.2023 bears the rubber stamp of the Deputy Commissioner of Customs with the date 13.03.2023 endorsed thereon. In these circumstances, the impugned order was clearly issued without providing a reasonable opportunity to the petitioner. Hence, the said order is not sustainable.

6. Consequently, the impugned order dated 22.02.2024 is set aside and the matter is remanded to the respondent for reconsideration. The respondent is directed to provide a copy of the show cause notice to the petitioner within one week from the date of receipt of a copy of this order. Upon receipt thereof, the petitioner shall reply thereto within a period of two weeks from the date of receipt of such show cause notice. Upon



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receipt of the petitioner's reply, 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. All contentions are left open to the petitioner.

7. The writ petition is disposed of on the above terms. There will be no order as to costs. Consequently, connected miscellaneous petitions are closed.

04.04.2024

Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

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To

The Principal Commissioner of Customs,
Chennai Preventive Customs Commissionerate,
Custom House, No.60, Rajaji Salai,
Chennai-600 001.

SENTHILKUMAR RAMAMOORTHY,J.

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