IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.06.2024

CORAM

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.Nos.15896 & 15898 of 2024
and
W.M.P.Nos. 17346, 17347, 17349, 17351 & 17355 of 2024

In both W.P's.:

1.M/s.Diamond Mink Blankets Ltd.,
By its Authorized Signatory
Shri. Hira Lal Goyal

2.Shri. Hira Lal Goyal, Authorized Signatory of
M/s. Diamond Mink Blankets,
Space "E", 3rd Floor, Surya Kiran Complex, 92,
The Mall, Ludhiana, Punjab – 141 001. ... Petitioners

Versus

1.Commissioner of Customs – Imports,
Customs House, 60, Rajaji Salai,
Chennai – 600 001.

2.The Assistant Commissioner of Customs (Refunds-II),
Office of the Commissioner of Customs – Imports,
Customs House, 60, Rajaji Salai,
Chennai – 600 001.

3.Commissioner of Customs (Appeals-II),
Customs House, 60, Rajaji Salai,
Chennai – 600 001. ... Respondents

Prayer in 15896 of 2024: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, to call for the records of 3rd respondent in and connected with Order-in-Appeal Seaport C.Cus.II.No.455/2024 dated 15.05.2024 emanating from F.No.C/966/R/2022-SEA, quash the same inasmuch as it remands the matter back to the proper officer to re-examine the case afresh.

Prayer in 15898 of 2024: Writ Petition filed under Article 226 of the Constitution of India, Writ of Prohibition desisting the respondent department from adjudicating the Show cause notice No.67/2021 dated 23.07.2021 in F.No.SR.No.2253/2017 (Pt.II) pursuant to Order-in-Appeal Seaport C.Cus.II.No.455/2024 dated 15.05.2024 emanating from F.No.C3/II/966/R/2022-SEA as the same is barred by limitation in terms of Section 28(9) of the Customs Act, 1962.

In both W.P's.:

For Petitioners : Mr. B. Kumar, Senior Advocate
for Mr. B. Satish Sundar

For Respondents : Mr. K. Mohanamurali
Senior Standing Counsel

COMMON ORDER

An appellate order dated 15.05.2024 and a show cause notice dated 23.07.2021 are challenged in these writ petition. An order dated 21.07.2022 was issued by the second respondent herein. The Customs Department carried the matter in appeal before the third respondent herein.

Such appeal was disposed of by setting aside the impugned order and remanding the matter to a proper officer. The order of remand is the subject of challenge in W.P.NO.15896 of 2024.

2. Learned senior counsel for the petitioner submits that the appellate authority is only empowered to remand the matter to the adjudicating authority. Consequently, he submits that the appellate authority could not have remanded the matter to a proper officer. He relies upon clause (b) of sub-Section 3 of Section 128A of the Customs Act, 1962 (the "*Customs Act*") in this regard. The second contention raised by learned senior counsel is that the remand can only be to a subordinate authority. In this case, he contends that the appellate authority [i.e. the Commissioner of Customs (Appeals-II)] could not have remanded the matter either to the Commissioner of Customs, who is a coordinate authority, or the Principal Commissioner of Customs. The last contention is that proceedings are barred under Section 128(9)(b) of the Customs Act, and that no finding was recorded in this regard.

3. Mr. K.Mohanamurali, learned senior standing counsel, accepts notice for the respondents. He points out that the contention raised before the appellate authority was that the original authority did not have jurisdiction as per Notification No.29/2022-Customs (NT) dated 31.03.2022. This contention was accepted by the appellate authority. In those circumstances, he submits that the matter could not have been remanded to the original authority, whose order was held to be without jurisdiction. He also submits that the remand was in consonance with sub-Section 3 of Section 128A.

4. On perusal of the impugned appellate order, it follows that the Department appealed against the order in original primarily on the basis of Notification No.29/2022. Such notification authorizes the Deputy Commissioner of Customs or the Assistant Commissioner of Customs to adjudicate matters where the duty involved is up to Rs.5 lakhs. If such duty is up to Rs.50 lakhs, the Additional Commissioner of Customs and the Joint Commissioner of Customs are authorized. Only the Principal Commissioner of Customs and the Commissioner of Customs are authorized to make the assessment without any monetary limit. Since the

contention that the order in original was without jurisdiction was accepted by the appellate authority on the basis of the above mentioned notification, a remand could not have been made to the authority which issued the order in original. Sub-Section 3 of Section 128A empowers the Commissioner (Appeals) to remand the matter to the adjudicating authority. The expression "adjudicating authority" is defined in Section 2(1) of the Customs Act as under :-

> *"2(1) "adjudicating authority" means any authority competent to pass order under or decision under this Act, but does not include Board, Commissioner(Appeals) or Appellate Tribunal."*

Given the definition of adjudicating authority, the appellate authority was empowered to remand the matter to a person who qualifies as adjudicating authority. Such adjudicating authority means a person competent to pass orders. On the facts of this case, in view of the jurisdictional objection, which was accepted by the appellate authority, remand could not have been made to the original authority. Therefore, the contention that the remand could not have been made to the proper officer is rejected as untenable.

5. The petitioner further contended that the plea of limitation was raised by relying on sub-Section 9 (b) of Section 28 of the Customs Act and that no finding was recorded in this regard. On examining the impugned order from this perspective, undoubtedly, the order does not record a finding on this issue. The order impugned before the appellate authority was set aside on the limited ground that the officer who issued the order in original did not have jurisdiction. Consequently, the matter was remanded to a proper officer. It is always open to the petitioner to raise the plea of limitation before the proper officer upon remand. Hence, interference with the impugned order is not warranted on this ground.

6. For all these reasons, I am not inclined to interfere with the order impugned herein. However, this order will not stand in the way of the petitioner presenting a statutory appeal. Since the challenge to the show cause notice is contingent on succeeding in the challenge to the remand order, such challenge also fails.

7. The writ petitions are dismissed on the above terms. There shall be no order as to costs. Consequently, the connected miscellaneous petitions are also closed.

26.06.2024

Index :No
Speaking
Neutral Case Citation : No
klt

To

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