THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **12.02.2024**

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.36059 of 2023
&
WMP No.36029 of 2023

M/s.Shree Laxmi International
Represented by its Proprietor,
Mr.Nikhil Ashok Ranka
SF NO 50/2/Madhavaram-Redhills High Road,
Grand Lyon Village, Chennai-600 052. ... Petitioner

vs

1. The Commissioner of Customs (Appeals-II)
Customs House, No.60, Rajaji Salai,
Chennai-600 001.

2. The Deputy Commissioner of Customs
Post Assessment Group-2,
Chennai-II Commissionerate, Custom House,
Chennai-600 001. ... Respondents

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus and call for the records pertaining to impugned order-in-appeal seaport.C.Cus.II No.666/2023 dated 09.10.2023 passed by the 1st respondent in F.No.C3/II/1049/O/2021-Sea and quash the same and direct the 2nd respondent to allow the re-assess the bill of entry no.9093091 dated 07.10.2020 after extending the benefit of Notification No.96/2008-Cus dated 13.08.2008.

For Petitioner : Mr.Hari Radhakrishnan

For Respondents: Mr.G.Meganathan (Customs)
Junior Standing Counsel

ORDER

The petitioner challenges an appellate order dated 09.10.2023 with regard to the exemption claimed in respect of bill of entry No.9093091 dated 07.10.2020.

2. The petitioner is engaged in the business of import and trading of teak wood. As regards the above mentioned bill of entry, the petitioner had claimed the benefit of the Customs Tariff [Determination of Origin of Products under the Duty Free Tariff Preference Scheme for Least Developed Countries) Rules, 2015. The petitioner's request for the benefit of exemption was denied by order dated 07.05.2021 of the second respondent. The said order was carried in appeal before the first respondent. The impugned order was issued in such appeal by the first respondent.

3. Learned counsel for the petitioner invited my attention to paragraph 6 of the appellate order. He pointed out that the appellate

authority set out the petitioner's grounds of appeal verbatim in paragraph 3. Thereafter, in paragraph 5, the contentions of the petitioner in course of personal hearing were set out. Although the petitioner had relied on Circular No.53/2020-Customs dated 08.12.2020, which permits third country invoicing provided the goods originate from a least developed country, learned counsel submits that the appellant authority did not take these contentions into account and instead reproduced paragraphs 16 and 19 of the order of the original authority. Therefore, he submits that the impugned order calls for interference.

4. Mr.G.Meganathan, learned standing counsel (Customs) for the respondents, referred to the counter affidavit on behalf of the respondents and contended that Circular No.53/2020-Customs-dated 08.12.2020 was issued subsequent to the bill of entry and that said circular cannot be applied retrospectively. Therefore, he submits that the rejection of the exemption claim does not contain any infirmity.

5. The impugned appellate order should be tested on the terms thereof and not with reference to the counter filed by the respondents

in these proceedings. The operative portion of the impugned order is set out below:

> *"6. I have gone through the facts of the case, grounds of appeal and submissions made during the personal hearing. I find that the appellant filed this appeal against the Order-in-Original No.84246/2021 dated 07.05.2021, issued the LAA. The appellant is engaged in the business of importing and trading teak wood. They had filed Bill of Entry No.9093091 dated 07.10.2020 for the import of "Tanzania origin Teak Sawn Timber" and classified it under CTH 4407 2910. The appellant had claimed the benefit of Notification No.96/2008-Cus dated 13.08.2008.*
>
> *However, the LAA denied the benefit of the said notification, citing that the invoice for the goods was issued by M/s.Global Timber DWC-LLC in Dubai. The LAA argued that third-party invoicing was not permissible according to the Rules of Origin published in Notification No.29/2015-Customs hence, the notification benefit to the appellant. Hence, this appeal.*
>
> *17. I find that the appellant had purchased goods vide Invoice No.AJQ/TG/683/2020 dated 21.08.2020 from M/s.Global Timber DWC-LLC, Dubai, UAE, whereas the goods are shipped from TANZANIA and the appellant is claiming DFTP for LDC Scheme (the Notification No.96/2008) for 100% exemption from BCD. There is no specific provision of*

third country invoicing in the rules of Origin published by Notification No.29/2015-Cus (N.T.) dated 10.03.2015 (Custom Tariff (Determination of Origin of Products under the Duty-Free Tariff preference scheme for Least Development Countries) Rules, 2015 of the DFTA of LDC Schemes, 2008 (vide Notification No.96/2008 dated 13.08.2008). Hence, I find that the appellant is not eligible for said notification benefit."

6. On examining the above extract, it is evident that the benefit of notification No.96/2008-Custom, dated 13.08.2008, was denied to the petitioner herein on the basis that there is no provision for third country invoicing in the relevant rules. While reaching this conclusion, the appellate authority did not engage with the submissions of the petitioner, either by way of grounds or by way of oral submissions made during the hearing. Instead, it appears that the same conclusions that were recorded in paragraphs 16 and 19 of the original order were reproduced.

7. Since the impugned appellate order was issued without dealing with contentions advanced by the petitioner, the impugned order calls for interference. Consequently, the impugned order is

quashed and the matter is remanded to the appellate authority for reconsideration. The appellate authority is directed to provide a reasonable opportunity to the petitioner, including a personal hearing, and, thereafter, issue a reasoned order after duly dealing with all contentions raised by the petitioner. This exercise shall be concluded within a maximum period of two months from the date of receipt of a copy of this order.

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

12.02.2024

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

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SENTHILKUMAR RAMAMOORTHY J.

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