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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14**.03.2025**

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
AND
THE HON'BLE MS. JUSTICE R.POORNIMA

C.M.A(MD)No.124 of 2018
and
C.M.P(MD)No.1797 of 2018

M/s.DCW Limited,
Caustic Soda and PVC Divisions,
Sahupuram,
Thoothukudi District.
Tamil Nadu 628 229. ... Petitioner/Appellant

.Vs.

The Commissioner of Customs
Custom House, New Harbour Estate,
Tuticorin – 628 004. ... Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 130(1) of the Customs Act, 1962 against the Final Order No.41743/2015, dated 11.6.2015, on the file C/0085/2007 of the Customs, Excise and Service Appellate Tribunal, South Zone Bench, Chennai.

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For Appellant : Mr.T.Sakthikumaran

For Respondent : Mr.R.Nandakumar
Senior Standing Counsel for Customs and CGST

JUDGMENT

DR.G.JAYACHANDRAN., J
AND
R.POORNIMA.,J

The Civil Miscellaneous Appeal is directed against the Final Order No. 41743/2015, dated 11.06.2015, on the file C/0085/2007 of the Customs, Excise and Service Appellate Tribunal, South Zone Bench, Chennai.

2.Heard the learned counsel appearing for the appellant as well as the learned Senior Standing Counsel appearing for the respondent/Department and perused the materials placed before this Court.

3.The allegation of the respondent/Department is that the appellant had cleared three bill of entries through Thoothukudi Port in respect of Vinyl Chloride monomer(in short called as 'VCM') during the month of April, 2004.

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Alleging that there was mis-declaration and exemption from the Customs Department, duty was claimed by the appellant and a show-cause notice was issued on 24.12.2004 to explain as to why action should not be taken against him for levy of penalty for using fake license and import of goods under three disputed bill of entries. After show-cause notice, the order in original was passed on 03.05.2005 holding that M/s.DCW Limited contacted Mr.Somanathan and Co to negotiate for high dicount and the product and without verifying the genuineness of the document stated to be DEFB licenses. They have purchased goods and therefore holding that the document produced ie, DEFB licenses for the import of goods in three bill of entries are false and not issued by ADGFT, Kanpur. A duty of Rs.95,29,591/- under provision to Section 28(1) of Customs Act was levied, apart from interest and penalty of Rs.5 lakhs. This was challenged before the Appellate Authority and before Appellate Authority, it was submitted that an opportunity to cross-examine the witnesses was not provided to the assessee. The said appeal was taken up for consideration by the Appellate Authority and it was remanded back for fresh hearing. After remand, the Adjudicating Authority passed an order declining the request of M/s.DCW Limited to cross-examine the witnesses. Aggrieved by the same, an appeal was

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filed before the CESTAT. However, without considering the facts that an opportunity to cross examine the officials, who have given the DEPB script. CESTAT disputed the appeal. This order is under challenge in this Civil Miscellaneous Appeal.

4.The core issue in this matter is as to whether the DEPB script propertly given to ADGFT are genuine in respect of disputed licenses.The department claims that it is a fake license. Contrarily, the assessee reiterated that it is genuine. It is necessary for the Adjudicating Authority to test the veracity of the genuineness of the document. For that purpose, cross examination of the signatory of those documents is necessary. Apparently in this case, even after remand to the adjudicating authority by the Appellate Authority to give an opportunity to cross-examination, the Adjudicating Authority has not given the opportunity and hence, on the face of records, the order impugned suffers from violation of principle of natural justice.

5.Hence the Civil Miscellaneous Appeal stands allowed, the Final Order No.41743/2015, dated 11.06.2015, on the file C/0085/2007 of the Customs,

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Excise and Service Appellate Tribunal, South Zone Bench, Chennai is set aside.The order of the Adjudicating Authority also stands set aside. The Adjudicating Authority is directed to give an opportunity to the assessee to cross-examine the officials in whose name the DEFB licenses issued and pass appropriate orders in accordance with law. The order in original by the Adjudicating Authority be passed, preferably, within a period of four months from the date of receipt of a copy of the order. No costs. Consequently, connected Miscellaneous Petition is closed.

[G.J.,J.] [R.P.,J.]
14.03.2025

NCS : Yes/No
Index : Yes / No
Internet : Yes / No

vsn

To

The Commissioner of Customs
Custom House, New Harbour Estate,
Tuticorin – 628 004.

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Copy to

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

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DR.G.JAYACHANDRAN, J.
and
R.POORNIMA,J.

vsn

JUDGMENT MADE IN

C.M.A(MD)No.124 of 2018
and
C.M.P(MD)No.1797 of 2018

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