(1988) 09 MAD CK 0041

In the Madras High Court

Case No : Writ Petition No. 1181 of 1982

Borax Morarji Ltd. APPELLANT

Vs

The Assistant Collector of Customs and Others RESPONDENT

Date of Decision : 06-09-1988

Acts Referred:

Customs Act, 1962 — Section 142, 17, 18

Citation : (1994) 46 ECC 223

Hon'ble Judges : Ramalingam, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S. Ramalingam, J.—The petitioner is a manufacturer of borax out of imported kernite or rasorite. In or about June 1979, the fifth

respondent, who was the canalising agent imported 4333.370 M.Ts. of kernite. The goods were transferred to the petitioner by the fifth

respondent and the petitioner was authorised to clear the goods. The petitioner filed the bill of entry for home consumption and gave the

classification of the imported goods as falling under item 25.01/32. The first respondent assessed the goods to duty and levied a duty of Rs.

35,80,542.70 provisionally. The petitioner cleared the goods. Subsequently, the petitioner received a letter dated 23.12.1980 from the first

respondent (Assistant Collector of Customs), purporting to be u/s 18(2) of the Customs Act, stating that the duty in respect of the imported goods,

which was assessed provisionally has since been finally assessed and called upon the petitioner to pay an additional sum of Rs. 35,00,975.22. The

petitioner made several attempts, including filing of appeal against the orders passed u/s 142 of the Customs Act. But till the filing of the writ petition, the petitioner was not served with any order of final assessment; nor was he furnished with reasons in support of the demand for additional

sum of Rs. 35,00,975.22. It is under these circumstances this writ petition has been filed to quash the above order of the first respondent.

2. Thiru. V. Ramachandran, learned Counsel for the petitioner states that the procedure prescribed under Sections 17 and 18 of the Customs Act

has not been followed strictly. Without conceding the contention of the petitioner that a final assessment had already been made, when a sum of

Rs. 35,80,542.70 was demanded from him, assuming that it was only a provisional assessment, the petitioner is entitled to be given an opportunity

to be heard before the final assessment is made. According to the petitioner till date the respondents have not given any reasons as to how the

additional sum of Rs. 35,00,975.22 has been arrived at. In addition thereto, learned Counsel for the petitioner submits that by a mere letter dated

23.12.1980 the first respondents cannot demand a huge sum. He has to pass an order of adjudication and only thereafter a demand can be made.

3. Thiru. P. Narasimhan, learned Counsel appearing for respondents 1 to 4 supports the orders impugned in this writ petition.

4. The rival contentions have been carefully considered. The submission of the learned Counsel for the petitioner that the additional sum can be

demanded from the petitioner only when a proper adjudication is made and after affording the petitioner an opportunity to state his case has to be

sustained. On the facts of the present case, whether the earlier assessment under which a sum of Rs. 35,80,542.70 [was levied] was a provisional

assessment or final assessment, insofar as the said assessment is sought to be modified by a subsequent demand dated 23.12.1980, it is elementary

that the assessing officer (the first respondent) should put the petitioner on notice, afford him an opportunity to state his case and on consideration

of the objections raised by the petitioner, pass a speaking order so as to enable the petitioner, if aggrieved, to prefer an appeal against that order.

In the instant case, this procedure has not been followed by the first respondent. Hence, the orders of the first respondent dated 23.12.1980 are

quashed and the matter is remitted to the file of the first respondent, who will pass a speaking order, after affording an opportunity to the petitioner

to state his case. If such a speaking order is made and if the petitioner is aggrieved thereby, he has undoubtedly a right of appeal to the appellate authority. Hence, the writ petition is allowed in the above terms. There will be no order as to costs.

