(2015) 10 MAD CK 0091

In the Madras High Court

Case No : Writ Appeal No. 1331 of 2015

King Overseas	APPELLANT
Vs	
The Assistant Commissioner of Customs (Refunds)	RESPONDENT

Date of Decision : 13-10-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Customs Tariff Act, 1975 — Section 3(5)

Citation : (2015) 10 MAD CK 0091

Hon'ble Judges : V. Ramasubramanian and T. Mathivanan, JJ.

Bench : Division Bench

Advocate : Joseph Prabhakar, for the Appellant; M. Devendran, Standing Counsel, for the Respondent

Judgement

V. Ramasubramanian, J.

1. This appeal arises out of the dismissal of a writ petition by the learned Judge directing the appellant to avail the alternative remedy of appeal as against an order rejecting their claim for refund.

2. Heard Mr. Joseph Prabhakar, learned counsel for the appellant and Mr. M. Devendran, learned Standing Counsel for the respondent.

3. The appellant filed a refund claim for a sum of Rs. 8,64,044.30 Ps, being the amount paid against 4% additional duty of customs levied under Section 3(5) of the Customs Tariff Act, 1975, for the import of reprocessed LLDPE granules vide 11 Bills of Entry. The refund was claimed in terms of Notification No. 102/2007-Cus dated 14.9.2007 as amended by Notification No. 93/2008 dated 1.8.2008 read with Board''s circular Nos. 6/2008-Customs dated 28.4.2008 and 16/2008-Customs dated 13.10.2008. The application for refund was made on 4.5.2012.

4. Though Circular No. 16/2008 dated 13.10.2008 obliges the jurisdictional commissioners to process the applications for refund within a period of three months and though the Customs Refund Application (Form) Regulations 1995

also oblige the proper officer to return the application, if there are any defects, within 10 working days of receipt, the respondent sent a notice after nearly two years only on 18.2.2014 pointing out only one defect in the application made by the appellant. The only defect pointed out in the notice dated 18.2.2014 (sent after 21 months of filing of the refund claim) is as follows :

"Certificate from statutory auditor/ Chartered Accountant, correlating the payment of ST/VAT on the imported goods (in respect of which refund is claimed) with the invoice of sale. (Correlating sheet to be certified by CA (Enclosure to Annexure III) & Certificate in Annexure III)."

5. By the said notice, the respondent called upon the appellant to appear before the proper officer on 24th, 25th and 26th of February 2014 along with the documents indicated in the notice, which we have extracted above.

6. But unfortunately, the notice dated 18.2.2014 sent from Chennai was received by the appellant in their office at New Delhi, on 24.2.2014, the date on which, the appellant was supposed to appear and produce the documents. Therefore, the appellant could not comply with the demand.

7. Holding the appellant guilty of not complying with the deficiency memo, the proper officer passed an Order in Original dated 5.5.2014 rejecting the refund claim. Challenging the said order, the appellant filed a writ petition in W.P. No. 22321 of 2014. The said writ petition was dismissed by the learned Judge by an order dated 31.10.2014 on the ground that they have an alternative remedy of appeal. Therefore, the assessee has come up with the above appeal.

8. It is true that the appellant has an effective alternative remedy of appeal. But, this is not a case where the appellant would stand to benefit by bypassing the alternative remedy. The case relates to a refund claim. The manner in which, the refund claim was processed and ultimately rejected, leaves much to be desired and this is not a fit case where the appellant should have been thrown to avail the alternative remedy. We have already extracted the only ground indicated in the notice dated 18.2.2014 sent by the Deputy Commissioner for not entertaining the refund claim. The reason is that a certificate from the Statutory Auditor correlating the payment of ST/ VAT on the imported goods with the invoices of sale was not enclosed.

9. But unfortunately, in the counter affidavit filed before the learned Judge, the respondent took a different stand in paragraph 8. It was stated in paragraph 8 of the counter affidavit that the refund claim was not rejected for the reason of non submission of the Chartered Accountant''s certificate within one year. The defect pointed out in the deficiency memo cum notice of personal hearing dated 18.2.2014 shows the opposite.

10. The respondent has relied upon Notification No. 102/2007 dated 14.9.2007 and the Board''s circular No. 16/2008 dated 13.10.2008. We do not know as to how reliance is placed upon the said Notification and the Board''s circular.

11. Under Notification No. 102/2007 dated 14.9.2007, the exemption can be given effect to, if the conditions stipulated in paragraph 2 are fulfilled. Paragraph 2(e)(iii) of the said Notification, on which, reliance is placed by the respondent in their counter affidavit in the writ petition, shows that the document evidencing payment of appropriate sales tax/VAT, as the case may be, by the importer on the sale of such imported goods, should be furnished. In Circular No. 16/2008 dated 13.10.2008, the Board has stipulated a time limit for processing the refund claims. The Regulations stipulate that whenever applications are found to be incomplete or defective, the same should be notified within 10 working days. Adequate time should be given to the assessee to set right the defects. All these have been overlooked by the respondent in the Order in Original.

12. By sending a notice on 18.2.2014 from Chennai to an assessee in New Delhi asking them to appear for a personal hearing on the 24th, 25th and 26th February 2014, the respondent cannot claim to have fulfilled the requirements of the Notification, the Regulations and the Circular. There is no dispute about the fact that the appellant received the deficiency memo only on 24.2.2014. In such circumstances, the respondent cannot be said to have complied with the statutory requirements, while rejecting the application for refund and this is a case where there has been a gross violation of the principles of natural justice warranting exercise of jurisdiction under Article 226, despite the availability of an alternative remedy.

13. In view of the above, the writ appeal is allowed, the order of the learned Judge is set aside and the writ petition is allowed, setting aside the Order in Original dated 5.5.2014. The appellant is granted two weeks'' time from the date of receipt of a copy of this order to send one more copy of the documents indicated in paragraph 2(e)(iii) of Notification No. 102/2007 dated 14.9.2007. Upon receipt of the documents, the respondent shall pass orders in accordance with law within a period of four weeks thereafter. No costs.