(2016) 06 MAD CK 0077

In the Madras High Court

Case No : Writ Petition No. 20083 of 2016 and W.M.P. No. 17308 of 2016

Meenakshi Impex APPELLANT

Vs

Commissioner of Customs (Seaport), Chennai-IV RESPONDENT

Date of Decision : 20-06-2016

Acts Referred:

Citation : (2016) 339 ELT 357

Hon'ble Judges : T.S. Sivagnanam, J.

Bench : Single Bench

Advocate : Shri A. Mohamed Ismail, for the Petitioner; Shri Vikram Ramakrishnan, Senior Panel Counsel, for the Respondent

Final Decision : Allowed

Judgement

T.S. Sivagnanam, J.—Heard Mr. A. Mohamed Ismail, learned counsel for the petitioner and Mr. Vikram Ramakrishnan, learned senior standing counsel appearing for the respondent.

2. The petitioner has filed this writ petition challenging the order passed by the second respondent dated 11-3-2016 by which the drawback filed by the petitioner was set aside and the petitioner was directed to effect payment of Rs. 9,54,283/- along with applicable interest. The impugned order has been challenged on the ground that it has been passed without issuing a show cause notice. Apart from this ground, the learned counsel for the petitioner has not canvassed any other ground before this Court.

3. To ascertain as to whether the contention raised by the petitioner is correct, this Court directed the learned counsel for the respondent to produce the original file. Accordingly, the file is produced by the respondents and it is stated that the first notice was sent on 15-10-2015, which is a show cause notice proposing to recover drawback for non-realization of export proceeds. The petitioner was granted time to file objections and also to appear for a personal hearing. According to the Department, this notice was despatched on 19-10-2015. The

second notice is said to have been issued on 30-12-2015, fixing the date of personal hearing as 11-1-2016 or 13-1-2016 and the third notice dated 12-2-2016 has been issued for the personal hearing on 22-2-2016. The file noting shows that the notice dated 12-2-2016 was despatched on 11-2-2016. The same could not have been done. The staff, who was incharge of the despatch, has given the date one day prior to the date of notice. There is no postal acknowledgement produced to show that the notices were received by the petitioner. Copy of the Despatch Register has been produced and in the said sheet of paper, name of the petitioner is shown in Serial No. 6, though there is no signature and seal "despatched on". There is no date and the date has been mentioned on the top of the page.

4. It cannot be disputed that the respondent Department have computerized all their activities and the filing procedure has been fully automized, remittances are received by e-payment and they are fully in tune with the concept of e-governance, as propounded by the Government of India. If such is the case, this Court fails to understand why they should follow the archaic practise of maintaining manual despatch book, which do not contain the required particulars. They could not be produced before any Court to substantiate that notices or orders have been served on the assessees.

5. Therefore, it is high time that the respondent gives a serious thought to this issue to automize the manner in which despatches have to be noted and how to ensure that the orders and notices are served on the assessees and the Department gets adequate proof of the same.

6. In the light of the discrepancies pointed out and the fact that there is no acknowledgement produced, though it may be a fact that the impugned order has been received by the petitioner in the same address, this Court is of the view that the petitioner should be given one more opportunity. One more aspect which has to be mentioned is that in the impugned order, the date of despatch mentioned is 11-3-2016. However, in the postal acknowledgement, the date is mentioned as 19-5-2016. This delay also has not been explained by the respondent.

7. Accordingly, this writ petition is allowed and the impugned order dated 11-3-2016 is set aside and the matter is remanded to the first respondent for fresh consideration, who shall issue a notice to the petitioner, grant an opportunity of personal hearing and after hearing the petitioner, the first respondent shall pass orders on merits and in accordance with law. No costs.