(2002) 02 MAD CK 0013

In the Madras High Court

Case No : Writ Petition No''s. 2182 and 2183 of 2002 and W.P.M.P. No''s. 3019 and 3020 of 2002

Orient Hardward and Tools Corporation — APPELLANT

Vs

The Commissioner of Customs and Central Excise, The Asst. Commissioner of Customs Inland Container Depot Singanallur and Superintendent (Customs) Inland Container Depot Singanallur — RESPONDENT

Date of Decision : 12-02-2002

Acts Referred:
Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 128A, 142, 28(1)

Citation : (2002) 02 MAD CK 0013

Hon'ble Judges : A. Kulasekaran, J

Bench : Single Bench

Advocate : Aravind P. Datar for S.C. Saravanan, for the Appellant;

Final Decision : Dismissed

Judgement

A. Kulasekaran, J.—The Petitioner has filed W.P. No. 2182 of 2002 seeking for a writ of certiorari to call for the records of the impugned

order dated 24-12-2001 bearing reference No. V.VIII/48/ 01/2001 of the third Respondent and quash the same.

W.P. No. 2183 of 2002 has been filed by the Petitioner seeking for a writ of Certiorari to call for the records of the Order No. 8/2000 dated 29-

02-2000 bearing Ref. No. C. No. VIII/ 23/6/99-ICD of the 2nd Respondent confirming the total demand of Rs. 2,28,927/- in terms of the show

cause notice dated 03-07-1997 and to quash the same.

2. These writ petitions came up for admission today. The Petitioners have filed the above writ petitions against the order of the Respondent passed

in Original No. 8/2000 dated 29-02-2000 confirming the payment to the extent of Rs. 2,89,927/- . The dispute involved in both the writ petitions

are whether the Respondents can recover the duty debited under the duty entitlement pass book (DEPB) and duly produced for clearance of the

imported goods with the Respondents cleared from bonded Warehouse under notification No. 34/97-Cus dated 07-04-1997.

3. The Petitioner had imported Electrodes and Regulator (Valves) and cutting Torch and nozzles from Malaysia during April 1999 from the

Chennai Sea Port. The customs Appraiser (ICD) Singanallur, Coimbatore has also permitted the Petitioners to warehouse the imported goods in

the premises of Central Warehouse Corporation, Singanallur, Coimbatore and he also issued re-warehousing Certificate to that effect. According

to the Petitioners, no duty implication can be inferred merely because of the goods were subsequently cleared from CWC Singanallur, Coimbatore

and not directly from ICD.

4. The Petitioners were served with a show-cause notice dated 03-07-1999 to show cause as to why exemption dated 01-08-1998 and 28-02-

1999 should not be denied to them and as to why the customs duty to the tune of Rs. 3,22,924/- should not be demanded from the Petitioners on

the ground that the goods were cleared from the Central Warehouse and not from the Port of Registration as such they are not entitled to the

benefit of the exemption. The Petitioners have submitted their explanation dated 11-08-1999 stating that the show cause notice is not legally

sustainable for the reason that the demand u/s 28(1) of the Customs Act 1962 can be issued only by the Asst. Commissioner under his signature.

The notification 34/1997 does not make any distinction between the clearance made from the ware house and from the Port directly. ICD

Singanallur has been mentioned as one of the IC Ds where DEFB can be registered. The show cause notice was issued based on the Board''s

circular dated 10/1997 and several others. The demand made to the extent of payment of special additional duties are also not sustainable as they

are traders and not actual users.

5. The 2nd Respondent herein has passed the order under Serial No. 08/2000 dated 29-02-2000 after affording opportunity to the Petitioner

thereby denied the exemption under notification 34/97/customs dated

07-04-1997, 56/98 dated 01-08-1998 and 22/99 dated 28-02-1999 and

demanded customs duty of Rs. 2,89,227/- u/s 142 of the Customs Act, 1962.

6. It is the case of the Petitioners that the order of the 2nd Respondent dated 29-02-2000 was received by one K. Ravi, employee of the

Petitioners firm on or about first and second of March 2000. It is alleged by the Petitioners that they were informed by the said Ravi that the 2nd

Respondent has dropped the show-cause proceedings against the Petitioners. Only after receipt of the demand notice dated 24-12-2001, the

Petitioners came to know that the 2nd Respondent has confirmed the payment. It is also alleged by the Petitioners that on enquiry they came to

know that the said Ravi wrongly read the last sentence and informed them that the entire demand has been dropped. Admittedly, the Petitioners

have not preferred any statutory appeal before the Commissioner of Customs and Central Excise (Appeals), Tiruchirapalli. According to the

Petitioners, the non-filing of the appeal before the Commissioner of Central Excise, Tiruchirapalli is neither wilful nor wanton.

7. The statutory appeal provided under . Section 128A of the Customs Act, 1962 within a period of 90 days from the date of receipt of the order

and another 90 days to condone the delay in filing the appeal, which was also expired already. The reasons assigned by the Petitioners for non-

filing of the appeal u/s 128A of the Customs Act is not at all valid, particularly, in this case, the impugned order has been passed by the 2nd

Respondent after affording opportunity to the Petitioners, and also duly served on them. When the Petitioners fail to avail the statutory remedy

within the prescribed time, they cannot invoke the discretionary relief under Article 226 of the Constitution of India.

8. Hence, the writ petitions are devoid of merits and they are liable to be dismissed at the stage of admission itself and accordingly dismissed. No

costs. Consequently, connected WPM Ps are also closed.

