(2001) 07 MAD CK 0083

In the Madras High Court

Case No : Writ Petition No''s. 13463-13466 of 1994

Vikrant Tyres Limited — APPELLANT

Vs

Union of India (UOI) — RESPONDENT

Date of Decision : 12-07-2001

Acts Referred:

Customs Act, 1962 — Section 14
Customs Rules — Rule 9(2)

Citation : (2001) 134 ELT 653

Hon'ble Judges : P.D. Dinakaran, J

Bench : Single Bench

Advocate : S. Girija, for Ramasubramaniam and Associates, for the Appellant;

Judgement

P.D. Dinakaran, J.—The petitioner seeks a Writ of Certiomrified Mandamus to call for the records of the third respondent dated 30-3-1994, to quash the same and consequently, to direct the respondent to refund the amounts covered by impugned order with interest at 18% p.a. from the date of payment.

2. All these writ petitions are filed by the same petitioner challenging the refusal of refund of differential duty of landing charges by the proceedings of the fourth respondent dated 16-7-1993, which was also confirmed by third respondent appellate authority, by proceedings dated 30-3-1974.

3. In brief, the second respondent-customs authority, by exercising powers u/s 14 of the Customs Act, read with Rule 9(2) of the Rules, imposed a notional landing charge (loading and unloading charges) on the various consignments of goods imported by the petitioner. The petitioner, contending that actual landing charges being substantially lesser than the notional landing charges, preferred a refund application before the fourth respondent in the respective writ petitions. However, the said refund applications were rejected by the fourth respondent by proceedings dated 16-7-1993 and thereafter, the same was confirmed by the third respondent-appellate authority by proceedings dated 30-3-1994, on the ground that the refund claimed by the petitioner would be very tiny and

entertaining such claim would only increase the workload of the respondents.

4. Aggrieved by the said proceedings, the petitioner has filed these writ petitions challenging the said refusal to refund the notional landing charges on the ground that when actual landing charges could be ascertained by the Port Trust authorities, there is no justification to levy notional landing charge on the consignment of the goods imported by the petitioner and that the taxing statute has to be strictly construed and in which event, the petitioner having paid in excess, is entitled for refund, particularly when actual landing charges are available.

5. There is no representation on behalf of the respondents.

6. In an identical case, V.S. Sirpurkar, J, in his order dated 27-8-1999 in W.P. No. 3612 of 1991 Vikrant Tyres Ltd. Vs. Union of India (UOI), filed by the present petitioner, appreciating the plea of the petitioner that the landing charges were not only ascertainable, but later on were actually ascertained, quashed the proceedings of the fourth respondent and the third respondent-appellate authority, refusing to refund the differential duty on landing charges between the actual landing charges and the notional landing charges and remitted the matter to the fourth respondent with a direction to dispose of the claim application of the petitioner for refund of the differential duty on landing charges, on merits, of course, after giving an opportunity to the petitioner, afresh, provided the petitioner satisfies that the liability had not passed on to some one else.

7. Since the facts and circumstances of the case and the contention raised by the petitioner in these writ petitions are identical and as I am satisfied with the contention of the petitioner that when the actual landing charges could be ascertained, there is no justification to levy a notional landing charge on the petitioner and the landing charges collected from the petitioner having been made under the taxing statute, petitioner is entitled to claim refund of differential duty on such landing charge, I am obliged to quash the impugned proceedings of the third respondent dated 30-3-1994, confirming the proceedings of the fourth respondent dated 16-7-1993, and remit the matter to the fourth respondent with a direction to give a fresh notice to the petition to explain that the liability had been passed on to some one else and thereafter, to pass appropriate orders on the claim of the petitioner for refund of differential duty on the impugned landing charges, on merits, within six months from the date of receipt of a copy of this order.

The writ-petitions are ordered accordingly. No costs.

