

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

WP.No.26584 of 2016
and
W.M.P.No.22773 of 2016

M/s.K.M.Knitwear,
rep.by its Partner,
No.14, D.E.F.Lakshmi Nagar,
First Street, City Garden,
Tirupur-641 602

... Petitioner

Vs.

1. Commissioner of Customs,
Adjudicating Unit, Exports,
Commissionerate II,
Custom House,
60, Rajaji Salai,
Chennai-600 001

2. The Additional Director General,
Directorate of Revenue Intelligence,
Gopalakrishnan Street,
T.Nagar,
Chennai-600 017

... Respondents

Writ petition filed under Article 226 of the Constitution of India praying for a writ of certiorari calling for the records relating to the order passed by the first respondent in Order-in-original No.46644 of 2016, dated 30.03.2016, and consequently quash the same.

For Petitioner : M/s.V.Pushpa

For Respondents : Mr.B.Rabu Manohar,SPC for R1
Mr.V.Sundareswaran,SPC for R2

ORDER

Heard Ms.V.Pushpa, learned counsel for the petitioner and Mr.B.Rabu Manohar, learned Standing Counsel for the first respondent and Mr.V.Sundareswaran, learned Standing counsel appearing for the second respondent and with the consent of either parties, the writ petition itself is taken up for final disposal.

2. The petitioner has filed this writ petition challenging the Order-in-Original, dated 30.03.2016, passed by the first respondent with regard to customs offence pertaining to import of garment accessories in the name of Apparel Exporters. The allegation is with regard to mis-use of exemption Notification No.12/2012-Customs, dated 17.3.2012.

3. There are totally 40 persons on whom show cause notices were issued and the petitioner is the 18th noticee. The typed set of documents shows that after the receipt of show cause notice, the petitioner requested for inspection of documents so as to enable them to submit their objections. The first respondent, by proceedings dated 16.10.2015, had issued an intimation of personal hearing to all the noticees and it is not in dispute that the petitioner and the their Directors were issued with notice of personal hearing. On receipt of the notice, the learned counsel, who has filed this writ petition, addressed a letter to the first respondent on 6.11.2015, stating that she has been engaged to appear on behalf of 26 noticees, which includes the petitioner herein. This was followed by another letter dated 1.12.2015, enclosing Vakalat given by all the noticees, including the petitioner. Thereafter, another opportunity of personal hearing was granted, by proceedings dated 29.1.2016. It is only thereafter, the petitioner submitted their objections to the show cause notice, which was received in the office of the first respondent on 10.02.2016.

4. The learned counsel for the petitioner submitted that in the reply to the show cause notice, in paragraph No.24 therein, the petitioner has specifically requested an opportunity of personal hearing to them before adjudicating the matter and also requested permission to cross-examine the witnesses, whose statements have been relied upon in the show cause notice, with regard to the allegations against them. After receiving the replies of all the noticees, the first respondent has adjudicated the show cause notice and passed the impugned order, by which penalty has been levied on the noticees at different rates. However, this Court need not go into the said fact since this Court has called upon the petitioner to

address the Court as to why they should be permitted to bypass the appeal remedy available under the provisions of the Customs Act, 1962 (hereinafter referred to as the 'Act' in short).

5. In response to the said query, the learned counsel for the petitioner, though initially stated that no opportunity of personal hearing was granted, subsequently when this Court pointed out that three notices of personal hearing were issued to the petitioner, the learned counsel amended her submission and submitted that no opportunity to cross-examine was granted and the petitioner was not heard by the first respondent. The learned counsel has also referred to Section 124 of the Act and submitted that the show cause notice itself is defective as it does not satisfy clause (a) of Section 124 of the Act. That apart, the impugned order is illegal, because, the petitioner was not granted reasonable opportunity of being heard in the matter in terms of Clause (c) of Section 124 of the Act.

6. It is not in dispute that out of 40 noticees, 26 noticees engaged learned counsel, who is appearing in this writ petition and she has given two letters, one stating that she has been engaged by 26 noticees and along with another letter she has enclosed the Vakalat given by her clients.

7. A cursory perusal of the impugned order reveals that opportunity of personal hearing was granted. The petitioner put forth a case that opportunity of personal hearing was not granted to them. However, this Court, exercising jurisdiction under Article 226 of the Constitution, cannot examine this disputed question, since there were several noticees and several of them had engaged the same counsel and record of the proceedings shows that opportunity of personal hearing has been granted to the noticees and their names are mentioned. Therefore, it has to be established by the petitioner's counsel that though she had appeared for 26 noticees, she wanted personal hearing separately for each petitioner. However, this appears to be not the clear stand of the petitioner nor the counsel, who is appearing for the petitioner. In any event, the petitioner has an effective alternate remedy under Section 129-A of the Customs Act, 1962, where, against the impugned order, the petitioner can prefer an appeal.

8. It is a settled legal position that the Customs Act and other Taxation Statutes are a complete Code by themselves. The enactment provides for a hierarchy of remedies and an aggrieved person should not be permitted to bypass the statutory remedy available under the Act, especially when the matter relates to a taxation Statute. On the grounds raised by the petitioner, I am not satisfied that this Court can exercise its

extraordinary jurisdiction to interfere with the impugned order and allow the petitioner to bypass the appeal remedy.

9. Hence, for all the reasons, the writ petition is dismissed as not maintainable. No costs. Connected miscellaneous petition is dismissed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

msk

To

1. The Commissioner of Customs,
Adjudicating Unit, Exports,
Commissionerate II,
Custom House,
60, Rajaji Salai,
Chennai-600 001
2. The Additional Director General,
Directorate of Revenue Intelligence,
Gopalakrishnan Street,
T.Nagar, Chennai-600 017

+1cc to Mr.B.Rabu Manohar, Advocate, S.R.No.43221
+1cc to Mr.V.Sundareswaran, Advocate, S.R.No.43215
+1cc to M/s.V.Pushpa, Advocate, S.R.No.43018

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W.P.No.26584 of 2016

PUR(CO)
CA(05/08/2016)

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