

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.03.2021

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)Nos.10186 & 10187 of 2014 and
M.P.(MD)Nos.1 & 1 of 2014

W.P.(MD)No.10186 of 2014

Quantum Coal Energy (P) Ltd.,
Rep. by its Managing Director,
P.Vijayakumar,
No.5-4-40, Kalai Nagar, 3rd Main Road,
Madurai – 625 017. ... Petitioner

Vs.

The Commissioner,
Office of the Commissioner of Customs,
Custom House,
Tuticorin – 628 004. ... Respondent

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the respondent Order-in-Original No.24/2014 dated 13.03.2014 and quash the same.

W.P.(MD)No.10187 of 2014

P.Vijayakumar ... Petitioner

Vs.

The Commissioner,
Office of the Commissioner of Customs,
Custom House,
Tuticorin – 628 004.

... Respondent

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the respondent Order-in-Original No.24/2014 dated 13.03.2014 relating to levy of penalty of Rs.1,00,000/- under Section 112(a)/114AA of the Customs Act, 1962 on the petitioner and quash the same.

(in both W.Ps.)

For Petitioner : Mr.Joseph Prabakar

For Respondent : Mr.S.Ragaventhre,
Junior Panel Standing Counsel.

COMMON ORDER

Heard the learned counsel appearing for the writ petitioners and the learned Standing counsel appearing for the respondent.

2. W.P.(MD)No.10186 of 2014 has been filed by the importer/company, while the other writ petition has been filed by the Managing Director in his individual capacity.

3. The company in question is an importer of coal. According to the petitioners, they imported steam coal during the period from March 2012 to November 2012 for which the following bills of entries were filed:-

S.No.	B/E No.	Date
1	6327543	22.03.2012
2	6436541	02.04.2012
3	6565660	17.04.2012
4	6800815	11.05.2012
5	6572183	18.04.2012
6	6709094	02.05.2012
7	7208031	25.06.2012
8	8418964	06.11.2012

4. During the relevant time, the Government had announced concessions and exemptions for import of steam coal. The petitioners' classification of the imported goods as steam coal was accepted by the Customs authority and the goods were allowed to be cleared. While so, the Additional Director General, Directorate of Revenue Intelligence issued show cause notice dated 21.03.2013 under Section 28 of the Customs Act calling upon the petitioner to show cause as to why action should not be taken for misrepresentation of

Bituminous coal as steam coal. The petitioner submitted their reply. Rejecting the stand taken by the petitioner, the impugned order dated 13.03.2014 came to be passed levying duty and penalty on the importer as well as the Managing Director of the importer company. Questioning the same, these writ petitions have been filed.

5. The respondent has filed a detailed counter affidavit and he wants this Court to sustain the impugned order. The learned Standing counsel took me through the contents set out therein.

6. When the matter was taken up for hearing, the learned counsel appearing for the petitioner submitted that the issue is no longer *res integra* and that the Hon'ble Supreme Court in *M/s.Canon India Private Limited V. Commissioner of Customs* (2021-VIL-34-SC-CU) had held that the expression "the proper officer" occurring in Section 28 of the Customs Act will only refer to the assessing officer who passes the original order making assessment. Paragraph Nos. 12 to 15 of the said Judgment read as follows:-

“12. The nature of the power to recover the duty, not paid or short paid after the goods have been assessed and cleared for import, is broadly a power to review the earlier decision of assessment. Such a power is not inherent in any authority. Indeed, it has been conferred by Section 28 and other related provisions. The power has been so conferred specifically on “the proper officer” which must necessarily mean the proper officer who, in the first 4 Section 2. Definitions- In this Act, unless the context otherwise requires,

(2) assessment means determination of the dutiability of any goods and the amount of duty, tax, cess or any other sum so payable, if any, under this Act or under the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as the Customs Tariff Act) or under any other law for the time being in force, with reference to

(a)

(b)

(c) exemption or concession of duty, tax, cess or any other sum, consequent upon any notification issued therefor under this Act or under the Customs Tariff Act or under any other law for the time being in force; instance, assessed and cleared the goods i.e. the Deputy Commissioner Appraisal Group. Indeed, this must be so because no fiscal statute has been shown to us where the power to re-open assessment or recover duties which have escaped assessment has been conferred on an officer other than the officer of the rank of the officer who initially took the decision to assess the goods.

13. Where the statute confers the same power to perform an act on different officers, as in this case, the two officers, especially when they belong to different departments, cannot exercise their powers in the same case. Where one officer has exercised his powers of assessment, the power to order re-assessment

must also be exercised by the same officer or his successor and not by another officer of another department though he is designated to be an officer of the same rank. In our view, this would result into an anarchical and unruly operation of a statute which is not contemplated by any canon of construction of statute.

14. It is well known that when a statute directs that the things be done in a certain way, it must be done in that way alone. As in this case, when the statute directs that the proper officer can determine duty not levied/not paid, it does not mean any proper officer but that proper officer alone. We find it completely impermissible to allow an officer, who has not passed the original order of assessment, to re-open the assessment on the grounds that the duty was not paid/not levied, by the original officer who had decided to clear the goods and who was competent and authorised to make the assessment. The nature of the power conferred

by Section 28 (4) to recover duties which have escaped assessment is in the nature of an administrative review of an act. The section must therefore be construed as conferring the power of such review on the same officer or his successor or any other officer who has been assigned the function of assessment. In other words, an officer who did the assessment, could only undertake re-assessment [which is involved in Section 28 (4)].

15. It is obvious that the re-assessment and recovery of duties i.e. contemplated by Section 28(4) is by the same authority and not by any superior authority such as Appellate or Revisional Authority. It is, therefore, clear to us that the Additional Director General of DRI was not the proper officer to exercise the power under Section 28(4) and the initiation of the recovery proceedings in the present case is without any jurisdiction and liable to be set aside.”

7. In the case also, the show cause notice was issued by the Additional Director General of DRI. The Hon'ble Supreme Court had held that he cannot be termed as "the proper officer". Since the entire proceedings were initiated by an authority who lacked the jurisdiction, applying the aforesaid decision of the Hon'ble Supreme Court the order impugned in these writ petitions is quashed. The writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

16.03.2021

Index : Yes / No
Internet : Yes/ No
PMU

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

The Commissioner,
Office of the Commissioner of Customs,
Custom House,
Tuticorin – 628 004.

WEB COPY

G.R.SWAMINATHAN,J.

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