IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.06.2015

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.34563 of 2014

and

M.P.No.1 of 2014

M/s.D&M Building Products (P) Ltd.,
No.3C-137, 1st floor, 2nd Main Road,
Kasturi Nagar, Bangalore - 560 043.
Rep. By its Director Mr.Sukant Gupta ... Petitioner

Vs.

1.The Deputy Commissioner of Customs,
Group 3 & 4, Customs House,
60, Rajaji Salai,
Chennai - 600 001.

2.The Commissioner of Customs,
Custom House, 60, Rajaji Salai,
Chennai - 600 001. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue writ of certiorarified to call for the records relating to Re-Assessment of Bills of Entries No.7357887, dated 12.11.2014 and 7518347, dated 27.11.2014 of the first respondent and quash the same and consequently direct the first respondent to allow clearances under the heading 7604 in terms of the Order in appeal No.849/2011, dated 17.10.2011 passed by the Commissioner of Customs (Appeals), Chennai, and pass a speaking order in terms of Section 17 of the Customs Act, 1962.

For Petitioner :Mr.J.Shankararaman
For Respondents :Mr.N.Senthilkumar,
Senior Standing Counsel

ORDER

It is the claim of the petitioner that they are engaged in the business of import and trading of Aluminium Profiles and they are also doing installation of the said Profiles into Aluminium Partitions. Whileso, when they imported Aluminium product from Hongkong, China and others countries, the same were classified under the heading 76042990 and the same were cleared on payment of appropriate amount of duty to the said heading. However, on one such occasion, the said classification was disputed by the Deputy Commissioner of Customs, vide Order-in-Original No.9742/2009, dated 06.10.2009 and classified the same under the heading 76109030. On appeal, the Commissioner of Customs (Appeals), Chennai, accepted the said classification vide Order-in-Appeal No.849/2011, dated 17.10.2011, which has become final as no appeal has been filed against the said Order-in-Appeal.

2. Therefore, it is the contention of the learned counsel for the petitioner that on a similar issue, the Commissioner (Appeals) rejected the classification for imports made through Bangalore airport under the heading 7604. As against that, the petitioner filed an appeal before the CESTAT, Bangalore, vide Appeal No.C/1810/2012 along with stay application. The Tribunal, vide its interim order No.26049/2013, dated 30.05.2013, granted stay of recovery of the adjudicated dues. In the meanwhile, the Customs department initiated investigation and thereby issued a show cause notice proposing to re-classify the Aluminium Profiles imported by the petitioner all over India. On adjudication, the said goods were re-classified under the heading 7610 and thereafter, the department demanded differential duty along with interest and penalties on the Managing Director of the petitioner company. As against the same, the petitioner is in the process of filing an appeal before the appropriate authority. Therefore, the grievance of the petitioner is, the respondent at Chennai, by refusing to adopt the classification under the heading 7604, insisted payment of duty under the heading 7610 for the clearance vide Bills of Entry Nos.7357887, dated 12.11.2014 and 7518347, dated 27.11.2014. Finally, the request of the petitioner was also rejected to register the payment of duty under the heading 7610.

3. It is further contended by the learned counsel for the petitioner that now the petitioner is also not in a position to file an appeal, since till date no speaking order has been passed by the first respondent and thus, he pleaded, if a speaking order is passed, the petitioner would be in a position to seek his further remedy.

4. It is the contention of the learned Senior standing counsel for the respondents that on earlier occasion, the very same goods of the petitioner were re-classified under the heading 7604 by the decision of the Commissioner (Appeals) in Order-in-Appeal No.849/2011, dated 17.10.2011. But, subsequently, on a specific input from the intelligence that the Importer/petitioner herein are importing Aluminium Profiles from Hong Kong, Singapore, Austria, Germany , USA, China and declaring / classifying them under Chapter heading 7604 1039 in order to pay lesser Basic Customs Duty (BCD) of 5%, the Officers of Directorate of Revenue Intelligence, Visakhapatnam, along with the Bangalore Unit, visited the registered

premises of the petitioner Company and recovered relevant records under Panchanama. Thereafter, a show cause notice dated 10.10.2013 was also served on the petitioner. The Commissioner of Customs, Air Cargo Complex, Bangalore, was appointed as the Common Adjudicating Authority to adjudicate the case. Finally, the Commissioner of Customs, Bangalore, vide Order-in-Original dated 30.10.2014, has adjudicated the case for the Bills of Entry imported through Seaport Chennai and upon adjudication, rejected the classification under CTH 7604 1039/7604 2990 of CTA, 1975 as claimed by the Importer and thereby ordered re-classification of the goods under CTH 76109030 of CTA demanding the differential duty amount of Rs.21,52,115/- and a penalty of Rs.5,50,000/- imposed on the Managing Director of the petitioner Company. Therefore, it is submitted that when the Re-Assessment of Bills of Entry Nos.7357887, dated 12.11.2014 and 7518347, dated 27.11.2014 passed by the department is as per law and is in terms of Order-in-Original No.BLR-CUSTM-000-029-14-15, dated 10.10.2014 passed by the Commissioner of Customs, Bangalore, in his capacity as a Common Adjudicating Authority to adjudicate the show cause notice issued by the DRI covering the imports made through various ports of the Country, the first respondent cannot be compelled to follow the earlier order, as he is also bound to follow the subsequent order, which is binding on him. Therefore, the allegation against the first respondent that he has committed judicial indiscipline by not following the decision of the Commissioner (Appeals) in Order-in-Appeal No.849/2011, dated 17.10.2011, is far from acceptance, since the first respondent has rightly followed the subsequent order as stated above. Finally, it is submitted that if sufficient time is granted, the first respondent shall consider the issue on merits in terms of the order passed by the Commissioner (Appeals) in Order-in-Appeal No.849/2011, dated 17.10.2011, along with the latest order passed on 30.10.2014. In all fairness, when they got two orders, one in Order-in-Appeal No.849/2011, dated 17.10.2011 passed by the Commissioner (Appeals) and another by the Commissioner of Customs, Bangalroe, vide Order-in-Original dated 30.10.2014, it is for them to take up the matter before the Tribunal, however, without doing so, they cannot drag on the issue.

5. Heard both sides.

6. As per the earlier order passed by this Court on 09.06.2015, Mr.Arivalaghan, Deputy Commissioner of Customs, Customs House, Chennai, appeared before this Court to assist the Court.

7. No doubt, as contended by the learned counsel for the petitioner, there was an order passed by the Commissioner (Appeals) vide Order-in-Appeal No.849/2011, dated 17.10.2011, classifying the goods imported by the petitioner under the heading 7604. But, subsequently, the Officers of the Directorate of Revenue Intelligence, Visakhapatnam, along with the Bangalore Unit, on a specific input from the intelligence that the Importer/the petitioner

herein are importing Aluminium Profiles from Hong Kong, Singapore, Austria, Germany, USA and China, and declaring / classifying them under Chapter heading 7604 1039 in order to pay lesser Basic Customs Duty (BCD) of 5%, visited the registered premises of the petitioner Company and thereby recovered relevant records under panchanama. Finally, the Commissioner of Customs, Bangalore, who was appointed as the Common Adjudicating Authority, vide Order-in-Original dated 30.10.2014, passed the final order rejecting the classification under CTH 7604 1039/7604 2990 of CTA, 1975 as claimed by the petitioner/Importer. Therefore, I am of the view that the petitioner is not right in saying that the first respondent ought to have accepted the previous order passed in Order-in-Appeal No.849/2011, dated 17.10.2011, by the Commissioner (Appeals).

8. Be that as it may, now the limited grievance of the petitioner is, they are entitled to seek appropriate remedy in view of the above said issues. Therefore, the first respondent is directed to consider the case of the petitioner on merits and in accordance with law by passing a detailed speaking order after providing an opportunity of personal hearing to them. Such exercise shall be completed by the first respondent within a period of 15 days from the date of receipt of a copy of this order. With this direction, the writ petition stands disposed of. No Costs. M.P.No.1 of 2014 is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The Deputy Commissioner of Customs,
Group 3 & 4, Customs House,
60, Rajaji Salai,
Chennai - 600 001.
2.The Commissioner of Customs,
Custom House, 60, Rajaji Salai,
Chennai - 600 001.
+1 cc to Mr.N.SenthilKumar, Advocate sr.29409

W.P.No.34563 of 2014
and
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aa31/07/2015