IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.12.2015

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The Hon'ble Mr.Justice R.Mahadevan

W.P.Nos.29601 of 2015 & 34251 of 2014

and

M.P.No.1 of 2015

M/s.Sun Direct TV.P.Ltd.,
rep. by its Authorised Signatory
Mr.S.Rajaraman
...Petitioner in both the W.Ps.

Versus

1. The Commissioner of Customs (Air & Air Cargo)
New Custom House,
Meenambakkam,
Chennai 600 027.

2. The Assistant Commissioner of Customs (Group 5A)
New Customs House,
Meenambakkam, Chennai 600 027.

....Respondents 1 & 2 in both the W.Ps.

3.The Assistant Commissioner of Customs (Group-5)
Custom House No.60,
Rajaji Salai, Chennai 600 001.
... 3rd Respondent in W.P.No.29601/15

Prayer in W.P.No.29601 of 2015:

Writ Petition, filed under Article 226 of the Constitution of India, seeking for issuance of Writ of Mandamus directing the third respondent to finalise the bills of entry No.(i) 4580408 dated 07.02.2014, (ii) 9327815, dated 23.05.2015, (iii) 2401839, dated 28.08.2015, (iv) 2453814, dated 02.09.2015, in terms of Final Order Nos. 800-801/2009, dated 2-7-2009 in Appeal Nos. C/83-84/2009 of Honourable CESTAT in within a reasonable time frame and consequently further direct the 3rd Respondent to finally assess all subsequent imports of set-top boxes by the petitioner in terms of Final Order Nos. 800-801/2009 dated 2-7-2009 in Appeal Nos. C/83-84/2009 of Honourable CESTAT.

Prayer in W.P.No.34251 of 2014 :

Writ Petition, filed under Article 226 of the Constitution of India, seeking for issuance of Writ of Mandamus directing the third respondent to to finalise the Bills of Entry Nos. 1.3544110 dated 15.10.2013 2. 3708251 dated 04.11.2013 3. 4165732 dated 23.12.2013 4. 4229576 dated 31.12.2013 5. 6002312 dated 03.07.2014 6. 6044623 dated 07.07.2014 7. 6046264 dated 07.07.2014 8. 6497578 dated 20.08.2014 9. 6617536 dated 02.09.2014 in accordance with the Final Order Nos. 800-801/2009 dated 02.07.2009 in Appeal Nos. C/83-84/2009 of the Customs Excise and Service Tax Appellate Tribunal.

For Petitione : Mr.Hari Radhakrishnan

For Respondents: Mr.A.P.Srinivas
Senior Standing Counsel for Customs

COMMON ORDER

The petitioner being the regular importer of set top boxes along with power supply, view card, remote control RCA cable and battery etc., claims assessment value on the import invoices. However, the second respondent had objected to such assessment on the respective invoice value and insisted that the Counter Veiling Duty should also be assessed on retail sales price in terms of Section 4-A of the Central Excise Act, 1944. When such being the position, the order passed by the Appellate Tribunal reported in 2009 (243) ELT 705 [Sun Direct TV Pvt. Ltd., vs. CC (SEA), Chennai] was brought to the notice of the respondent, the same had not been taken into consideration and no order of assessment has been passed till date. When repeated representations were made, the first respondent assured the petitioner that the bills of entry will be finalised after studying the details with regard to the contentions of the petitioner and necessary assessments will be made. Failure on the part of the respondent in making the assessments, the petitioner is before this Court.

2. The Department has filed the counter affidavit wherein, in paragraph-9 it is stated as follows:

> "It is submitted that regarding para 3 and 4 there is no truth in the contention of the petitioner. In the Hon'ble CESTAT order, the issue decided on certain declarations of the

petitioner/importer (i.e.,) the set top boxes were provided free of cost by the petitioner. However, in the year 2013 the Mumbai customs ascertained many facts contrary to the above declarations made by the importers in case of M/s. TATA SKY Ltd., as detailed in the brief facts. In view of the emerging facts contra to their declaration, the Mumbai customs passed a O-IN-O No.13645 dt: 06.03.2015 ordering the assessment of STB under Section 4-A (i.e.) MRP based assessment denying the contention of the importer M/s. TATA SKY for assessment under Section 4 of Central Excise Act and found that the same amounts to sale under Standards of Weights and Measurements Act, 1976. The said O-IN-O has been upheld by Commissioner (Appeals), Mumbai vide O-in-A No.989 of 2013. The importer preferred appeal before Hon'ble CESTAT, which is pending for final order. Further throughout India the STB are assessed under Section 4A read with notification, 49/2009 CEX. In the light of emerging new facts, after detailed consultation with the importers of STBs, including the petitioner, provisional assessment have been resorted to under Section 18 of Customs Act, 1962 since 2013. The assessment is a provisional one subject to finalization in terms of the power conferred under Section 18 of Customs Act, 1962."

3. Learned counsel for the respondents also submitted that the provisional audit assessment made in respect of the petitioner is only a temporary arrangement provided under Section 18 of the Act and final orders are likely to be passed by the respondents after following the procedure contemplated as per law.

4. I have considered the rival submissions and perused the materials available on record.

5. Learned counsel for the petitioner after elaborate arguments submitted that it would be suffice if the assessment is completed in accordance with law within the time stipulated by this Court for which the learned counsel for the respondent submitted that necessary orders would be passed on merits and in accordance with law, as directed.

6. Hence, the respondents are directed to complete the assessment after providing due opportunity to the petitioner and thereafter pass necessary orders. Such an exercise shall be completed within a period of six weeks, from the date of receipt of a copy of this order.

With the above direction, these Writ Petitions are disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/
ASSISTANT REGISTRAR(CS-II)

/TRUE COPY/

SUB-ASSISTANT REGISTRAR

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To

1. The Commissioner of Customs (Air & Air Cargo)
New Custom House,
Meenambakkam,
Chennai 600 027.

2. The Assistant Commissioner of Customs (Group 5A)
New Customs House,
Meenambakkam,
Chennai 600 027.

3.The Assistant Commissioner of Customs (Group-5)
Custom House No.60,
Rajaji Salai, Chennai 600 001.

+2 CC to MR. A.P.Srinivas Advocate. SR.NO.67010 & 67011

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34251 of 2014

CO-SK
JD 28/12/2015