IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 13.3.2015

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THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.3835 of 2015

M/s. Lila Polymers Private Limited
represented by its Director
Shri. Devesh Magia,
123, "C" Wing,Mittal Towers
12th Floor, Nariman Point,
Mumbai - 400 021. ... Petitioner

.Vs.

1. The Commissioner of Customs (Imports)
Chennai II Commissionerate
Customs House, No.60, Rajaji Salai
Chennai - 600 001

2. The Deputy Commissioner of Customs
(Group 2) Customs House,
No.60, Rajaji Salai, Chennai - 600 001 ... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of mandamus directing the respondents to re-assess the bills of entry No.7133423 dated 21.10.2014 and 7133448 dated 21.10.2014 in the light of Order-in-Appeal C.Cus.No.3 and 4/2014 dated 19.1.2015 passed by the Commissioner of Customs (Appeals) and cause clearance of the said goods within a reasonable time.

For Petitioner : Mr.Hari Radhakrishnan

For Respondent : Mr.A.P.Srinivas

O R D E R

The petitioner has come up with the present Writ Petition directing the respondents to re-assess the bills of entry No.7133423 dated 21.10.2014 and 7133448 dated 21.10.2014 in the light of Order-in-Appeal C.Cus.No. 3 and 4 / 2015 dated 19.1.2015 passed by the Commissioner of Customs (Appeals) and cause clearance of the said goods within a reasonable time.

2. The petitioner is engaged in international trading, distributing and indenting House for all polymers trade. The petitioner entered in to a sale agreement dated 01.10.2014 with M/s. Tunga PVC Pipes Private Limited for the sale of consignment comprising of 126 MTs covered in 5040 Bags. According to the petitioner, the assessment was carried out by the second respondent without granting an opportunity of hearing and without issuing notice to him. Aggrieved against the said assessment order, the petitioner filed an appeal before the Commissioner of Customs (Appeals). The Commissioner of Customs (Appeals) vide order dated 19.1.2015 allowed the appeal by setting aside the assessment made by the Department. Since no action was taken thereafter, the petitioner is before this Court.

3. The learned counsel for the petitioner contended that since the petitioner has got a favourable order from the Commissioner of Customs, the Department shall issue proper Detention Certificate so that detention and demurrage charges can be waived in terms of Regulation 6 (i) of Handling of Cargo in Custom Area Regulations, 2009, as the goods are pending for last four months. According to the learned counsel even though the petitioner has got a favourable order from the appellate authority, the goods have not been released till date.

4. Per contra, the learned standing Counsel for the respondents submitted that as against the order dated 19.1.2015, the Department is going to prefer an appeal and the appeal time is not yet over. According to the learned standing counsel, till the appeal time is over, the goods cannot be cleared. The learned standing counsel further submitted that unless and until, the petitioner pays 50% of the differential amount and produce Bank Guarantee for the remaining amount, the relief sought for by him cannot be granted by the respondents.

5. I have heard the learned counsel for the petitioner and the learned standing counsel for the respondents and perused the materials available on record.

6. It is not in dispute that the petitioner has got a favourable order dated 19.1.2015 in Appeal C.Cus.II No. 3 and 4 whereby and where under the original order of assessment has been set aside. It is useful to extract the relevant portion of the order dated 19.1.2015, which reads thus:

> Further, the appellants have stated that all along they have been classifying the said goods under CTH 39042110 and paying Anti Dumping Duty. The assessing authority is now seeking to reclassify the goods under CTH 39041090. If t his CTH is correct then the all the ADD paid by the appellants

to the tune of Rs.65.28 crores during the period from November 2013 to January 2014 will be rendered refundable to them. The Assessing office in his misplaced enthusiasm for maximizing revenue may in fact end up harming the interests of revenue. This is the precise reason as to why Board in its wisdom had issued Circular No.41/98 dated 11.6.1988 wherein it has been clarified that a settled position of classification should not be disturbed without the approval of the Commissioner.

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In view of the above discussions, it is held that CTH 39042110 would be the appropriate heading for the impugned goods. Accordingly, the assessment is set aside. The impugned bills of entry will be recalled and reassessed by classifying the goods under CTH 39042110 with consequential benefit subject to eligibility.The importer/appellant succeeds in his appeal and the classification initially made by him is found correct. Therefore, the department is directed to issue proper Detention Certificate so that detention and demurrage charges are waived in terms of Regulation (1) of Handling of Cargo in Customs Areas Regulations, 2009.

(extracted as such)

7. Since the petitioner has paid the admitted amount and that the balance amount is only minimal, this Court, directs the petitioner to pay 20% of the differential amount and produce Bank Guarantee for the remaining amount. On such payment and production of Bank Guarantee, the respondents are directed to consider the case of the petitioner for release of the goods. Depending upon the outcome of interim order or final order that may be passed passed by the authority concerned, it is open to the respondents to proceed further in the matter.

8. The writ petition is disposed of accordingly. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner of Customs (Imports)
   Chennai II Commissionerate
   Customs House, No.60, Rajaji Salai
   Chennai - 600 001

2. The Deputy Commissioner of Customs
   (Group 2) Customs House,
   No.60, Rajaji Salai, Chennai - 600 001

+1cc to Mr.Hari Radhakrishnan, Advocate, S.R.No.14678
+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.14326

W.P.No.3835 of 2015

LRS(CO)
CA(20/03/2015)