IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 09.11.2016

CORAM

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

WP.Nos.4216 & 4217/2014 & MP.Nos.1&1/2014

M/s.Sun Direct TV Private Limited,
Rep.by its Authorized Signatory,
Mr.S.Rajaraman,
Murasoli Maran Towers,
No.73, MRC Nagar Main Road,
MRC Nagar, Chennai-600 028. ..Petitioner in both WP's

..vs..

1.The Commissioner of Customs (Appeals)
Custom House,
No.60, Rajaji Salai,
Chennai-600 001.

2.The Deputy Commissioner of Customs (RMS-PCA),
Custom House,
No.60, Rajaji Salai,
Chennai-600 001.
..Respondents in Both WP's

Common Prayer: Writ petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus and call for the records pertaining to the Impugned Order dated 23.01.2014 in F.No.C3/1226 & 1228/D/2013-SEA passed by the 1st Respondent and quash the same and further direct the 1st respondent to hear the appeal Nos.C3/1226/D/2013-SEA and C3/1228/D/2013-SEA filed by the petitioner on merits.

For Petitioner in both WPs : Mr.G.Derrick Sam

For Respondents in both WPs : Dr.S.Seethalakshmi Senior Panel Counsel

COMMON ORDER

Heard Mr.Derrick Sam, learned counsel appearing for the petitioner and Dr.S.Seethalakshmi, learned Standing Panel Counsel appearing for the respondents and perused the materials available on record including the counter affidavits filed by the respondents in both these writ petitions.

2 The petitioner has challenged the order passed by the Commissioner of Customs [Appeals] in the stay petitions filed by the petitioner in the appeals preferred against the order-in-original with regard to the classification of the goods which are imported by the petitioner. In the Bill of Entry No.639031 dated 05.01.2008, the petitioner declared the goods as "Low Noise Block Down Converter" and classified the same under CTH 85437099. However, the Adjudicating Authority, by order dated 06.11.2013, classified the product as "Universal Single KU Low Noise Booster" under CTH 85299090 and demanded differential duty of Rs.1,58,548/-. When the petitioner sought for stay of this order, the Commissioner [Appeals] has directed that the entire amount to be pre-deposited for being entitled to an order of stay.

3 In WP.No.4217/2014, the petitioner has challenged a similar order passed by the Commissioner [Appeals] in the stay petition filed in the Appeal against the order in original dated 06.11.2013 in respect of the Bills of Entry Nos.60044 dated 31.01.2008 ; 738531 dated 12.05.2008 and 768434 dated 16.06.2008, wherein the petitioner had declared the goods as "Universal Single KU Low Noise Booster" and classified it under CTH 85437099. However, the Adjudicating Authority classified the product under CTH 85299090 and demanded the differential duty of a sum of Rs.7,68,958/- for all the three Bills of Entry.

4 The learned counsel for the petitioner would submit that the petitioner has made out a prima facie case before the Commissioner [Appeals] inasmuch as in respect of an identical import, the Commissioner [Appeals] has passed an order in favour of the petitioner in Order-in-Appeal No.580/2013 dated 04.04.2013. Apart from that, the petitioner relied upon a Circular No.13/2013 issued by the Central Board of Excise and Customs dated 05.04.2013. Therefore, it is submitted that the Commissioner [Appeals] ought to have granted stay of demand of the differential duty and heard the appeals on merits.

5 The learned Senior Panel Counsel appearing for the respondents referred to the findings recorded in the Order-in-Original as well as by the Commissioner [Appeals] and

submitted that the Commissioner [Appeals] have considered the facts of the case and had exercised his discretion and has come to the conclusion that the entire amount has to be paid as pre-deposit for being entitled to an order of stay and there is no error in the order and the petitioner should be directed to comply with the order and then contest the appeal on merits.

6 The three cardinal principles which have to be satisfied by the petitioner for being entitled to the grant of stay are [1] prima facie case ; [2] balance of convenience ; and [3] irreparable hardship.

7 Insofar as the aspect relating to prima facie case is concerned, this Court is of the view that in respect of the identical import, the Commissioner [Appeals], in the Order-in-Appeal No.580/2013 dated 04.04.2013, has accepted the petitioner's classification of the goods as "CTH 85437099". That apart, Circular No.13/2013 dated 05.04.2013, also prima facie appears to be fully in favour of the petitioner. Thus, the petitioner has been able to establish a prima facie case, which also would lien in favour of the petitioner while considering the aspect of balance of convenience.

8 With regard to irreparable hardship is concerned, though the petitioner has not pleaded any financial difficulty, since the issue is covered by Circular issued by the Central Board of Excise and Customs and the order passed by the Commissioner [Appeals] in assessee's own case in Order-in-Appeal No.580/2013 dated 04.04.2013. This Court is convinced that the petitioner is entitled to an order of stay without any condition for being able to contest the appeal before the Commissioner [Appeals].

9 Accordingly, the writ petitions are allowed and the impugned orders in F.No.C3/1226 & 1228/D/2013-SEA dated 23.01.2014 are set aside and there will be an order of stay of the order-in-original dated 05.11.2013, till the appeals are heard and disposed of by the 1st respondent. Taking into consideration the fact that the appeals are pending since 2013, the 1st respondent is directed to dispose of the said appeals on merits and in accordance with law as expeditiously as possible, preferably within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

AP

To
1.The Commissioner of Customs (Appeals)
Custom House, No.60, Rajaji Salai, Chennai-600 001.

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

+1 cc to M/s.Hari Radhakrishnan Advocate sr 64503
+1 cc to M/s.Dr.S.Seethalakshmi Advocate sr 65037

WP.Nos.4216 & 4217/2014

rp(co)
aa01/12/2016