IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE:22.07.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.17439 of 2016
and
WMP.No.14909 of 2016

M/s.SMI Steels,
Represented by its Authorised Signatory,
Mr.B.Shankar, No.9A, Sannathi Street,
Jaihind Nagar, Manali Express Road,
Ernavoor, Chennai - 600 057. .. Petitioner

Vs.

1.The Director General of Foreign Trade,
Ministry of Commerce and Industry,
Department of Commerce,
Udyog Bhavan, New Delhi - 110 001.

2.The Assistant Commissioner of Customs (Group 7H),
Office of the Commissioner of Customs-IV,
Customs House, No.60, Rajaji Salai,
Chennai - 600 001. .. Respondents

Prayer:Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari to call for the records comprised in impugned notification No.38/2015-2020 dated 05.02.2016 on the file of the first respondent and quash the same.

For Petitioner : Mr.M.N.Bharathi

For 1st Respondent: Mrs.S.Meenakumari, CGSC
For 2nd Respondent: Mr.S.R.Sundar, SPC

ORDER

Heard Mr.M.N.Bharathi, learned counsel for the petitioner; Mrs.S.Meenakumari, learned Central Government Standing Counsel appearing for the 1st respondent and Mr.S.R.Sundar, learned Senior Panel Counsel for the 2nd respondent. With the consent of the learned counsel on either side, the Writ Petition itself is taken up for final disposal.

2.The petitioner has filed this writ petition challenging a Notification issued by the Government of India dated 05.02.2016 in Notification No.38/2015-2020. This notification has been issued by the Director General of Foreign Trade, by which the Minimum Import Price on Iron and Steal under Chapter 72 of ITC (HS), 2012 has been notified. The petitioner filed a Bill of Entry for clearance for human conception of the product of the goods described as 'Defective EG coated sheet cuttings'. According to the petitioner, the product imported is a defective product some time akin to scrap. Therefore, the petitioner assessed the value at US Dollar 300 and stated that the tax payable by them. However, the respondent Department has not accepted the value given by the petitioner, but would go by the notification dated 05.02.2016 under which the Minimum Import Price has been fixed as US Dollar 643 in Serial No.119 of the Notification. The learned counsel has drawn the attention of this Court to a representation given by them to the 2nd respondent on 30.03.2016 reiterating that the price declared by them as US Dollar 300 per metric tonne is in terms of the provisions of Section 14(1) of the Customs Act, 1962 and that the product being defective goods, the Minimum Import Price as stipulated in the Notification cannot be insisted upon. Since the respondent did not accept the petitioner's contention, the petitioner has filed this writ petition challenging the Notification dated 05.02.2016.

3.Though the petitioner seeks for a larger relief, the learned counsel for the petitioner would submit that since the consignment is a life consignment, the petitioner is interested in clearing the goods though the challenge is to the notification. The learned counsel referred to the order passed by the Ministry of Steel in S.O.2061(E) dated 10.06.2016 and submitted that in terms of Clause 3(2) therein, the sub-standard or defective stainless steel products, which do not conform to the specified standard, shall be disposed off as scrap as per the scheme of testing and inspection of the Bureau of Indian Standards.

4.The learned Standing Counsel appearing for the respondents submitted that the Department is obliged to assess the consignment in accordance with the Notification issued by the DGFT wherein Minimum Import Price has been fixed. Though such is the contention raised by the respondents, the petitioner having taken a specific stand that it is a defective product and not a prime product, the Bill of Entry should be assessed upon considering the facts. Even the Steel Order passed by the Ministry of Steel stated that for conforming as to whether the product is defective or sub-standard stainless steel, testing and inspection is required.

5.In the light of the above, while holding that it would be unnecessary for this Court to go into as to the validity of the impugned Notification. It would suffice to direct the 2nd respondent to draw samples from the consignment within a period of one week from the date of receipt of a copy of this order and send the samples to the National Metallurgical Laboratories, Madras Center, CSIR Madras Complex, Tharamani, Chennai - 600 113 for testing and report. Based on the report obtained from the National Metallurgical Laboratory, the respondents shall assess the petitioner's Bills of Entry and pass appropriate orders within a period of one week from the date on which the report is received from the Laboratory.

6.With the above observation, the Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.
sgl

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1.The Director General of Foreign Trade,
Ministry of Commerce and Industry,
Department of Commerce,
Udyog Bhavan, New Delhi - 110 001.

2.The Assistant Commissioner of Customs (Group 7H),
Office of the Commissioner of Customs-IV,
Customs House, No.60, Rajaji Salai,
Chennai - 600 001.

+ 1 cc to MR.S.YASHWANTH, ADVOCATE SR 41807

+ 1 CC TO M/S.S.MEENAKUMARI, ADVOCATE SR 41835

+ 2 CCS TO S.R.SUNDAR, ADVOCATE SR 42107

KR/2/8/16 W.P.No.17439 of 2016