IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.08.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.20719 of 2017

M/s.BenQ India Pvt.Ltd.,
rep.by its Senior Manager Finance,
Mr.Rajeev Pal,3rd Floor,
9B Building, DLF Cyber City,
DLF Phase III, Gurgaon,
Haryana-122002. .. Petitioner

Vs

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

2.The Additional Commissioner of Customs (SIIB),
Custom House, No.60, Rajaji Salai,
Chennai-600 001.

3.The Appraiser,
Special Investigation and Intelligence Branch (SIIB),
Custom House, No.60, Rajaji Salai,
Chennai-600 001. .. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus to direct the first respondent to provisionally release the goods imported vide Bill of Entry Nos.2094269 dated 14.06.2017, 2128764 and 2131930, both dated 17.06.2017 and detained vide three Seizure Memos dated 30.06.2017 issued by the third respondent in F.No.ENQ 42/2017-SIIB in terms of Section 110A of the Customs Act, 1962 within a reasonable time limit.

For Petitioner : Mr.Hari Radhakrishnan

For Respondents: Mr.K.Ravi,
Senior Panel Counsel

ORDER

Heard Mr.Hari Radhakrishnan, learned counsel for the petitioner and Mr.K.Ravi, Senior Panel Counsel appearing for the respondents.

2.With the consent of the learned counsel on either side, the main writ petition itself is taken up for final disposal.

3.This writ petition has been filed praying for a direction upon the first respondent to provisionally release the goods imported by 3 Bills of Entry dated 14.06.2017, 17.06.2017 and 17.06.2017 respectively, which have been detained vide 3 Seizure Memos dated 30.06.2017 by the third respondent in terms of Section 110A of the Customs Act, 1962.

4.The request made by the petitioner for grant of provisional release is pending consideration before the first respondent as could be seen from the petition dated 07.07.2017 which was received in the office of the first respondent on 10.07.2017. The case of the petitioner is that the Tariff entry 85295200 covers monitor which is capable of directly connecting to and designed for use with an automatic data processing machine (computer). The petitioner's case with regard to interpretation as to how the goods have to be classified, is that while the word "solely" denotes exclusive use, the word "designated for use" accommodates other uses apart from the main or principal use. Therefore, the fact that monitor is capable of being used with other multi media interface, cannot deter its classification under CTH 85285200 and consequent entitlement of notification No.24/2005-Cus., according to the petitioner.

5.In my considered view, this issue cannot be decided at this juncture, since the first respondent is still yet to take a decision on the petitioner's claim for provisional release. Taking note of the fact that the Bills of Entry were presented on 14.06.2017 and 17.06.2017, there will be a direction to the first respondent to consider the petitioner's application for provisional release and pass appropriate orders on merits and in accordance with law, within a period of two weeks from the date of receipt of a copy of this order, after affording an opportunity of personal hearing to the authorised representative of the petitioner.

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

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

KM

To

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

2.The Additional Commissioner of Customs (SIIB),
Custom House, No.60, Rajaji Salai,
Chennai-600 001.

3.The Appraiser,
Special Investigation and Intelligence Branch (SIIB),
Custom House, No.60, Rajaji Salai,
Chennai-600 001.

+ 1 cc to Mr.Hari Radhakrishnan, Advocate SR.55885

W.P.No.20719 of 2017

CS-V
EU 4.08.17