IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.07.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.16978 of 2017 &
W.M.P.No.18437 of 2017

M/s.Accord Trading India Pvt.Ltd.,
Rep. by its Director, Mr.Ahamed,
No.61, Priya Apartments,
1st Lane, Pantheon Road, Egmore,
Chennai - 600 008. ... Petitioner

Vs.

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

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

Prayer: Petition filed under Article 226 of the Constitution of India to issue a WRIT OF MANDAMUS to direct the second respondent to finally assess the goods covered, vide bill of entry No.2057980 dated 12.06.2017 after classifying the goods under Customs Tariff Heading 2522 1000.

For Petitioner : Mr.Hari Radhakrishnan

For Respondents : Mr.S.R.Sundar,
Senior Standing Counsel

O R D E R

Heard Mr.Hari Radhakrishnan, learned counsel for the petitioner and Mr.S.R.Sundar, learned Senior Standing Counsel accepts notice on behalf of the respondents. With the consent on either side the writ petition itself is taken up for disposal.

2.The petitioner seeks for an issuance of writ of mandamus to direct the second respondent to finally assess the goods covered in bill of entry No.2057980 dated 12.06.2017 by accepting the petitioner's classification of goods under Customs Tariff Heading 2522 1000. The petitioner had effected import of quicklime through the Tuticorin Port and those imports were classified under Tariff Item No.28259090. Though the petitioner sought for adopting the Tariff No.25221000, the petitioner had initially cleared the consignment by furnishing bonds and Bank Guarantees. Subsequently, the Assistant Commissioner, Import Assessment, Customs House, Tuticorin accepted the classification of quicklime under Customs Tariff Heading 25221000 and consequently, the Assistant Commissioner (PD Bonds), Customs House, Tuticorin cancelled the bonds and Bank Guarantees by proceedings dated 11.04.2017. The petitioner is stated to have imported the same goods viz., quicklime through the Chennai Port and sought for clearance of the goods by adopting the Tariff Entry No.2522 1000, However, the bill of entry was provisionally assessed under Tariff No.28259090 and the petitioner was directed to pay duty on the said goods at the rate specified under the said tariff and was compelled to execute the bond and furnish Bank Guarantees. By placing reliance on the proceedings issued by the Assistant Commissioner, Import Assessment Tuticorin, the petitioner is stated to have met the second respondent in person and requested that the bill of entry may be finally assessed under Tariff Entry No.2522 1000. This was followed by a representation through their counsel on 23.06.2017. Since the representation was not considered, the petitioner is before this Court.

3.In the affidavit filed in support of the writ petition, the petitioner would state that the second respondent has taken a stand that on account of DRI alert, he would not be in a position to accept the petitioner's request. In any event, the petitioner is entitled to know as to what is the stand of the Department based on his representation. It may be a different case if according to the second respondent the product imported is other than quicklime. Furthermore, when the petitioner placed reliance on identical imports made through the Tuticorin Port, the second respondent should consider the submission made by the petitioner and should pass appropriate orders.

4.The learned Standing Counsel appearing for the respondents would submit that reasonable time may be granted to the second respondent to take a decision on the petitioner's representation submitted through their counsel on 23.06.2017.

5.In the light of the above, the writ petition is disposed of by directing the second respondent to consider the petitioner's representation dated 23.06.2017 and pass orders on merits and in accordance with law within a period of three weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

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

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

+1cc to Mr.Hari Radhakrishnan, Advocate SR.No.47533
+1cc to Mr.S.R.Sundar, Advocate SR.No.46821

W.P.No.16978 of 2017 &
W.M.P.No.18437 of 2017

SKS(CO)
GN(10/07/2017)