IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2017

CORAM

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER

W.P.No.28954 of 2015

And

M.P.No.1 of 2015

Eaton Power Quality Pvt. Ltd.,
Represented by its Financial Controller
K.Venkataramana ... Petitioner

Vs.

Deputy Commissioner of Customs (Group 5A)
Customs House, 60, Rajaji Salai,
Chennai 600 001. ... Respondent

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the Respondent in Order in Original No.39313/2015 in F.No.S49/662/2014/Gr.5A&B in Job No.38313/2015 dated 26.06.2015 and quash the same as arbitrary and illegal.

For Petitioner : Mr.Joseph Prabakar
For Respondent : Mr.T.Pramod Kumar Chopda

O R D E R

1.This writ petition seeks to challenge the order dated 26.06.2015 passed by the respondent.

2.The petitioner claims to have imported Uninterrupted Power Supply system (in short, UPS) falling under entry 8504.40. The petitioner, as it appears, had filed Bill of Entries bearing nos.7375049 and 7299272 dated 14.11.2014 and 07.11.2014 and sought to clear the same under exemption Notification No.25/2005 dated 01.03.2005.

3.The respondent, however, sought to impose duty which included Basis Customs Duty (BCD) at the rate of 7.5% along with CVD, SAD and Cess on the ground that the petitioner was not entitled to the benefits of the aforementioned exemption notification.

3.1. The dispute therefore, veers around whether or not the imported goods, i.e., UPS, falls under entry 8504.40.

4.The said entry, for the sake of convenience is extracted herein after:

"4. 8504.40 Static converters for automatic data processing machines and units thereof, and telecommunication apparatus"

5.It is an admitted position that the petitioner has paid the entire duty and cleared the goods under the aforementioned Bills of Entries. In so far as the impugned order is concerned, the same has been passed under Section 17 (5) of the Customs Act, 1962 as the petitioner demanded that a speaking order be passed.

6.A perusal of the impugned order would show that the respondent has come to the conclusion that the UPS imported by the petitioner was used along side CT Scan, Dialysis Equipment, CNC Machines which were not automatic data processing machines.

7.The petitioner, before me, disputes this conclusion reached by the respondent and therefore, contends that the UPS/ goods imported came within the ambit of the entry and were consequently, entitled to the benefits of the aforementioned exemption notification.

8.According to me, these are mixed questions of fact and law, which would require adjudication by the concerned statutory Authority.

9.Accordingly, the writ petition is dismissed with liberty to the petitioner to take recourse to an appropriate remedy, albeit, in accordance with law. Consequently, the connected miscellaneous petition is closed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

Deputy Commissioner of Customs (Group 5A)
Customs House, 60, Rajaji Salai,
Chennai 600 001.

+1cc to Mr.Joseph Prabakar, Advocate, S.R.No.11389
+1cc to Mr.J. Pramod Kumar Chopda, Advocate, S.R.No.11269

nri(CO)
md(20/03/2017)

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