In the High Court of Judicature at Madras

Dated : 25.7.2017

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.18827 & 18828 of 2017

M/s.Symrise India Pvt.Ltd., rep.
by its Senior Vice President
Semmancher,Chennai-119 ...Petitioner in both the petitions

Vs

1.The Additional Director General,
Directorate of Revenue Intelligence,
No.27, Adarsh Towers, G.N.Chetty
Road, T.Nagar, Chennai-17.

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

3.The Deputy Commissioner of Customs
(Group 2), Custom House, No.60,
Rajaji Salai, Chennai-1. ...Respondents in both the Petitions

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Mandamus

(i) to direct the respondents to permit clearance of the goods covered by Bills of Entry No.9364701 dated 19.4.2017 and 2333589 dated 06.7.2017 (WP.No.18827 of 2017) and

(ii) to direct the second respondent to provisionally release the goods detained vide mahazar dated 12.7.2017 in terms of Section 110A of the Customs Act, 1962 without imposing any condition (WP.No.18828 of 2017).

For Petitioner : Mr.Hari Radhakrishnan

For Respondent-1 : Mr.V.Sundareswaran, SPC

For Respondents 2 & 3 : Mr.K.S.Ramasamy, SPC

COMMON ORDER

Mr.V.Sundareswaran, learned Senior Panel Counsel accepts notice for the first respondent. Mr.K.S.Ramasamy, learned Senior Panel Counsel accepts notice for respondents 2 and 3. Heard the learned counsel on both sides. By consent, the writ petitions are taken up for joint disposal.

2. The petitioner company is engaged in the manufacture of flavours and fragrances. They had imported a consignment of caprylic/capric triglyceride/MB (palmester 3595/MB) vide Bill of Entry dated 19.4.2017 by classifying the goods under Customs Tariff Heading (CTH) 2915 3990. The second respondent raised a query regarding the classification of the imported goods and proposed to classify the same under CTH 1516. The petitioner obtained a clearance certificate from the Food Safety and Standards Authority of India vide report dated 21.6.2017.

3. However, the goods have been detained by the respondents, more particularly, at the instance of the first respondent in the factory premises of the petitioner on the ground that there is a mistake in the classification of the goods. Admittedly, the goods in question have crossed the customs barrier and reached the petitioner's factory premises to be used by them for production. Apart from indicating that there is a mistake in the classification, the respondents have not pointed out any other deficiency as could be seen from the impugned order dated 12.7.2017.

4. The petitioner has also made a request to respondents 2 and 3 for provisionally releasing the goods and it appears that they have informed the petitioner's counsel that unless the first respondent gives clearance, the question of provisionally releasing the goods will not be considered. In this regard, all the representations given to the Authorities are still pending. Therefore, the petitioner is before this Court.

5. The learned counsel for the petitioner submits that the classification adopted by the petitioner is correct. According to the petitioner, even assuming that the classification as proposed by the respondents is to be adopted, the only difference is the basic customs duty at 20% instead of 7.5% as paid by the petitioner and the nett result would be that the petitioner is entitled to get a refund, as the amounts of CVD and SAD, which have been paid by the petitioner, are much more and if the revised classification as proposed by the Department is adopted, the CVD will be NIL.

6. The learned counsel for the Department has produced a calculation sheet and relying upon the same, it is submitted

that if the CVD is calculated at the revised rate as proposed by the Department, the petitioner would have to pay the basic customs duty of Rs.21,78,146.73 Ps against the payment effected by the petitioner to the tune of Rs.13,06,888.04 Ps.

7. The learned Senior Panel Counsel appearing for the first respondent submits that it may be true that the only dispute in the instant case pertains to classification of the imported product and that the Authority concerned may be directed to consider the petitioner's application dated 14.7.2017 for the provisional release of the goods.

8. After hearing the learned counsel for the parties and perusing the materials placed on record, it is seen that the only dispute is with regard to the classification of the goods. Admittedly, the goods have been detained only in the factory of the premises after having been cleared by the Customs.

9. Taking into consideration the facts and circumstances, the writ petitions are disposed of with a direction to the petitioner to pay 50% of the difference in basic customs duty, if the classification as proposed by the Department under CTH 1516 is adopted and furnish a personal bond for the remaining value. The third respondent is directed to furnish a calculation sheet to the petitioner indicating the difference in the basic customs duty within a period of two days from the date of receipt of a copy of this order, after which, on the petitioner remitting 50% of the basic customs duty as proposed and furnishing a personal bond as directed above, the goods shall be released forthwith. The release of the goods will be without prejudice to the rights and contentions of the Department and it is open to the Department to issue a show cause notice to the petitioner and proceed further in accordance with law. Apart from the above, there are two other live Bills of Entry, which have been filed by the petitioner on 19.4.2017. The respondents are directed to process the same and whatever is the duty demanded, the petitioner shall remit the entire duty and on such remittance, the goods shall be released forthwith. No costs.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

To
1.The Additional Director General, Directorate of Revenue Intelligence, No.27, Adarsh Towers, G.N.Chetty Road, T.Nagar, Chennai-17.

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

3.The Deputy Commissioner of Customs (Group 2), Custom House, No.60, Rajaji Salai, Chennai-1.

+1cc to Mr.V.Sundareswaran,Advocate sr.52442

+1cc to Mr.K.S.Ramasamy,Advocate sr.52301

+1cc to Mr.Hari Radhakrishnan,Advocate sr.52201

WP.Nos.18827 & 18828 of 2017

gp(co)
ss(26/7/2017)