In the High Court of Judicature at Madras

Dated : 25.7.2017

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.18891 to 18893 of 2017

M/s.Swashthik Industries, rep. by its Partner Mrs.M.Nirmala ...Petitioner in WP.18891/2017

M/s.Swashthik Caps Private Limited, rep.by its Director Mr.Mahendra Kumar ...Petitioner in WP.18892/2017

M/s.Swashthik Preforms Private Ltd., rep.by its Director Mr.Mahendra Kumar ...Petitioner in WP.18893/2017

Vs

The Assistant Commissioner of Customs (Group 2), Custom House, No.60, Rajaji Salai, Chennai-1. ...Respondent in all the WPs

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Mandamus to direct the respondent to amend and modify the assessments in terms of the powers granted to it under Section 149 of the Customs Act, 1962 in respect of (i) Bill of Entry No.6967631 dated 06.10.2014 (ii) two Bills of Entry Nos.2768979 dated 22.7.2013 and 4182489 dated 26.12.2013 and (iii) two Bills of Entry Nos.2768764 dated 22.7.2013 and 4182962 dated 26.12.2013, by applying Notification 12/2012-Customs dated 17.3.2012.

For Petitioners : Mr.S.Murugappan

For Respondent : Mr.V.Sundareswaran, SPC

COMMON ORDER

Mr.V.Sundareswaran, learned Senior Panel Counsel accepts notice for the respondent. Heard both. By consent, the writ petitions are taken up for joint disposal.

2. The prayer sought for in all the three writ petitions is identical wherein the petitioners seek a direction to the respondent to amend and modify the assessments made in respect of certain Bills of Entry, which are subject matter of the writ petitions by applying Notification No.12/2012-Customs dated 17.3.2012 by exercising powers under Section 149 of the Customs Act, 1962.

3. The case of the petitioners is that they are engaged in importing and trading in various commodities and in the course of business activities, they imported polyester chip bottle grades BT02 and BT06 from Oman through Chennai Port. As per the supplier's invoice, the goods were valued at USD 56,830.47 (CIF), USD 33,975 (CIF) and USD 33,975 (CIF) respectively. The Bills of Entry were assessed and the duty, as demanded, was paid by the petitioners and the goods were also cleared.

4. It is submitted that based on the documents filed, the Bills of Entry were assessed by the officer concerned at Chennai Custsoms in conformity with the classification of goods under Chapter Heading CH 3920 6919 with 10% basic customs duty, 12% additional duty, 2% education cess, 1% secondary education cess and 4% special additional duty of customs. Subsequently, the petitioners came to know that the basic customs duty applicable for the imported product is only 5% and not 10% in terms of Notification 12/2012 dated 17.3.2012.

5. The petitioners would state that they are not experts in the classification provisions and that only after verification, they came to know that the basic customs duty is only 5%. Accordingly, they submitted representations for amendment of the Bills of Entry under Section 149 of the said Act. Since the representations were not disposed of, the petitioners are before this Court.

6. In terms of Section 149 of the said Act, the proper officer may, in his discretion, authorize any document, after it has been presented in the Customs House, to be amended. The Proviso states that no amendment of Bill of Entry or Shipping Bill shall be authorized to be amended after the imported goods were cleared for home consumption or deposited in a warehouse except on the basis of documentary evidence, which was in existence at the time the goods were cleared, deposited or exported, as the case may be. Thus, the only embargo is that a person seeking relief under Section 149 of the said Act cannot rely upon a documentary evidence, which came into existence after the goods were cleared, deposited or exported, as the case may be.

7. In the case on hand, the petitioners place reliance on a Notification issued by the Department in Notification 12/2012 dated 17.3.2012, which was in existence much prior to the date of import. Since the petitioners have also placed reliance on the decision of the Division Bench of the High Court of Bombay in the case of Hero Cycles Ltd. Vs. Union of India [reported in (2009) 240 ELT 490], to support their contention that the fact that the petitioners have paid duty under mistake of law or by oversight cannot result in being assessed to duty, which was otherwise not payable.

8. Considering the fact that the applications given by the petitioners are still pending, the writ petitions are disposed of with a direction to the respondent to consider the applications of the respective petitioners dated 21.10.2016 on merits and pass a speaking order thereon in accordance with law, after affording an opportunity of personal hearing to the authorized representative of the petitioner within a period of four weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

RS

To

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

+1cc to M/s.S.Murugappan, Advocate, S.R.No.52121/17
+1cc to M/s.Sundareswaran, Advocate, S.R.No.52441/17

WP.Nos.18891 to 18893 of 2017

AR(CS IV)
CU(03/08/2017)