

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 14.09.2017

<i>Date of Reserving the Order</i>	<i>Date of Pronouncing the Order</i>
18.08.2017	14.09.2017

CORAM:

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.40081 & 40082 of 2015andM.P.Nos.1&1 of 2015W.M.P.Nos.18761, 18762, 23601 & 23602 of 2016

L&T Metro Rail (Hyderabad) Limited,
Rep., by Ashigh Malhotra/Authorized Signatory,
Company Secretary and Head of the Legal Dept.,
Q3, 4th Floor, Cyber Towers Hi-Tech City,
Madhapur, Hyderabad - 500081. ..Petitioner in W.P.No.40081/2015

Hyundai Rotem Company,
Rep., by Mr.II Yeon Cho,
Project Manager,
Miyapur Metro Rail Depot,
SY No.28/2, Opposite IOCL, Petrol Bunk,
Mumbai Highway, Rangareddy,
Hyderabad, Telangana - 500 049. ..Petitioner in W.P.No.40082/2015

Vs.

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

2.The Additional Director General,
Directorate of Revenue Intelligence,
Mumbai Zonal Unit,
13 - UTI building, New Marine Lines,
Mumbai - 400 020.

..Respondents in both W.Ps.

Common Prayer: Writ petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records comprised in impugned order No.41685/2015, dated 25.09.2015 (issued on 30.09.2015) on the file of the first respondent, quash the same.

For Petitioner : Mr.C.Natarajan Senior counsel for
M/s.Mohammed Shaffiq
Mr.Vijaykumar Punna

For Respondents : Mr.T.Pramodkumar Chopda
Senior Standing counsel for R1
Mr.V.Sundareswaran
Senior Standing counsel for R2

COMMON ORDER

These Writ Petitions have been filed challenging an order passed by the Commissioner of Customs, Chennai-II/first respondent, Commissionerate, in Order-in-Original No.41685 of 2015, dated 30.09.2015. By the impugned order, the first respondent held that the impugned goods, i.e., EL-S-PR Railway Coach-TC (Coach), imported by the petitioner in W.P.No.40081 of 2015, to be re-classified as “Not Self-Propelled”- passenger coaches, under CTH 8605 of the first Schedule to the Customs Tariff Act, 1975 (hereinafter referred to as “Act”); confirmed the customs duty leviable amounting to Rs.9,17,89,622/-, that the same is payable, but has not been paid by the petitioner due to willful mis-statement and misclassification under the provision of Section 28 along

with interest under Section 28AA of the Customs Act, 1962, (hereinafter referred to the Customs Act), and ordered confiscation of the goods covered under the Bills of Entry with option for redemption on the payment of redemption fine of Rs.5,00,00,000/- in lieu of confiscation under Section 125(1) of the Customs Act, as the goods were already released provisionally, and imposed a penalty of Rs.9,17,89,622/- with applicable interest on the petitioner in W.P.No.40081 of 2015 (hereinafter referred to as 'L&T MR'), under Section 114A of the Customs Act and imposed a penalty of Rs.1,00,00,000/- on the petitioner in W.P.No.40082 of 2015 (hereinafter referred to as 'Hyundai').

2. As against the order impugned, the petitioners have a remedy by way of an appeal before the CESTAT. The Writ Petitions have been filed challenging the impugned order as being passed in violation of principles of natural justice; that the first respondent is bound by the International legal obligations entered into by the Government of India with the Government of Korea that the Commissioner ignored the written opinion on HS classification by Korean Customs Classification Institute; that the impugned order is bad for want of jurisdiction, as the Directorate of Revenue Intelligence (lacked jurisdiction) to issue show cause notice, consequently, the impugned order is also vitiated for lack of jurisdiction. The impugned goods, having been cleared for Home Consumption unconditionally loses its character, 'as imported goods' thereby

rendering the confiscation proceedings wholly bad for want of jurisdiction, and consequently rendering the imposition of redemption fine in lieu of confiscation is equally bad for want of jurisdiction. The integrated nature of driver motor coach and trailer coach cannot be dissected, as it is one integrated unit meaning that each component installed in the driver coach works in complete synchronization with other components in the trailer car and or of no function in the absence of the trailer car. The terms “self-propelled” is a technical word, which must be interpreted in its scientific sense and not by use of dictionary meaning in a bureaucratic manner. The show cause notice and the impugned order have interpreted the term 'propulsion' as equivalent to the presence of the traction motor, whereas propulsion includes an integrated process. That while interpreting a tariff heading, scientific and technological advancements cannot be lost sight of to interpret it within the confines of archaic understandings. The metro train trailer coaches cannot be seen on the same footing and interpretation of the general “coach”, which is recognised by international expert bodies, railway manufacturers and metro train operators all over the world. The impugned order on the one hand has said that the classification must be done on “nature and characteristic of the coach”, but on the other hand has failed to see that the archaic understanding of ordinary train coaches cannot be imposed on the metro train trailer coaches. The impugned order is barred by limitation in terms of Section 28 of the

Customs Act and thus, suffers from lack of jurisdiction. The first respondent failed to see the entire description which reads as EL-S-PR Railway Coach -TC, which means Electrically Self Propelled Coach classifiable under tariff entry 8603 as recognised by the annexure-II, the India-Korea Comprehensive Economic Partnership Agreement. The impugned order while placing reliance on the invoices and other documents had erred in placing reliance only on portion of the same, while ignoring the other part, which is contrary to the settled principle that one cannot approbate and reprobate. The above are broadly the grounds on which the impugned order has been challenged.

3. Mr.C.Natarajan, learned Senior counsel for the petitioner submitted that though the impugned order has been challenged on several grounds, he would restrict the grounds of challenge to two, namely, that the Courts will give due weightage to the obligations contain in bilateral treaties entered into between the two countries and in the instant case, the treaty between the India and Korea, which was reduced into writing called as “India and Korea Comprehensive Economic Partnership Agreement” and under Article 5.1 of the treaty, both countries agreed to administer their import and export processor for goods traded under the agreement on principles that procedures be simplified and harmonized on the basis of international standards, while recognizing the importance of balance between compliance and facilitation to

ensure the free flow of trade and to meet the needs of government for revenue and protection of society; entry procedures be consistent and transparent to ensure predictability for importers and exporters. Further under Article 5.2, each party (India/Korea) shall ensure that its customs authorities shall adopt or maintain procedures that provide for release of goods on completion of all formalities in compliance with its laws and regulations and the parties, through their customs authorities, shall establish means of consultation with their trade and business communities to promote greater co-operation and the exchange of information. It is further submitted that Article 5.9 of the Treaty deals with Customs Cooperation and the parties among other things committed that to the extent practicable, assist each other in tariff classification, valuation and determination of origin of goods, for the purpose of preferential tariff treatment. Further, each party, on request, shall notify the other party, in writing the classification of a good of the other party determined by it. The parties shall consult to address the discrepancies regarding classification between the parties. Further, under Article 5.10, the parties agree to establish a customs committee to address any customs related issues. For uniform interpretation, application of various chapters, Rules/regulations addressing issues on tariff classification and valuation relating to determination of origin etc. The first respondent committed serious error in the decision making process by not taking into consideration the bilateral treaty between the two

countries.

4. Mr.C.Natarajan, referred to the communication from the customs valuation and classification institute addressed to Hyundai enclosing the notification regarding the 5th Tariff Classification Committee deliberation results, dated 30.06.2015, concerning the goods exported by Hyundai. This document was referred to justify that the goods have been correctly classified under CTH 8603. It is further submitted that a civil complaint was lodged by Hyundai was registered by the Korean customs service, which was taken up for consideration by the harmonized system committee, which among other things performs the function to prepare recommendations to secure uniformity in the interpretation and application of the Harmonized System and the said committee opined as follows:-

8603.10

1. *Three uncoupled railway coaches, comprised of two electrically - propelled "M-Cars" and one trailer "T-Car", each being 22.6m long, 2.9m wide, and 3.8m high. After coupling, the three coaches, also known as an Electric Multiple Unit (EMU), are intended to be used in a distributed traction system for an urban railway.*

A pantograph in the upper part of the T-car provides electricity, which passes through the main transformer and is transmitted to

converters in the M-Cars. The converters transformer the electric current from AC (alternating current) to DC (direct current) and send it to inverters, which change the DC into three-phase AC to activate the electric motors.

5. It is submitted that though the opinion was rendered w.e.f. 01.01.2007, it has to be given due weightage and supports the classification adopted by the petitioner. Thus, it is submitted that the first respondent, while adjudicating the show cause notice, has observed that the materials placed by the petitioner, namely, the classification as approved by the Korean Customs was not called for by the Department and they have not sought for any advice from the Korean Customs and it is not understood based on what facts and technical features, such classifications were arrived by them under Tariff Heading 8603 and the same will not bind the Indian Customs, who will take independent decision based on the facts in issue in accordance with the Rules and Regulations and the law governing the classification. This finding renders the decision making process as completely flawed and therefore, the matter should be remanded back to the Commissioner for fresh adjudication to consider the documents placed by the petitioner. Reliance was placed on the decision of the Hon'ble Supreme Court in the case of ***All Kerala Online Lottery Dealers Association vs. State of Kerala*** reported in ***(2016) 2 SCC 161***, for the

proposition that in a modern progressive society, it would be unreasonable to confine the intention of a legislature to the meaning attributable to the word used at the time, the law was made and it is presumed that Parliament intends the Court to apply to an ongoing Act a construction that continuously updates his wording “to allow for changes since the Act was initially framed”.

6. Commenting upon the observation made by the Adjudicating Authority that the evidence and documents produced by the petitioner from the Korean Customs Authorities, were not called for by the Department, it is submitted that what evidence would be sufficient to prove the case of a party is a matter for the party to determine and the party cannot be expected to ask the adjudicating authority whether he would be willing to accept such evidence and such finding of the Adjudicating Authority, is wholly untenable. In support of such contention, reliance was placed on the decision of the Hon'ble Supreme Court in the case of *Heinz India Pvt., Ltd vs. State of U.P.*, reported in **(2012) 5 SCC 443**. It is further submitted that when the Adjudicating Authority has refused to admit admissible evidence and over looked the important evidence, a Writ of Certiorari can be issued. In support of such contention, reliance was placed on the decisions of the Hon'ble Supreme Court in the case of *Sawarn Singh vs. State of Punjab* reported in **(1976) 2 SCC 868** and *State of A.P. vs. P.V.Hanumantha Rao* reported in **(2003) 10 SCC 121**.

7. Mr.V.Sundareswaran, learned Senior Panel counsel for the DRI submitted that the petitioners by declaring the goods as EL-S-PR coach had mis-declared the same as self-propelled coaches falling under CTH 8603 1000 instead of classifying the same under CTH 8605 0000 and not entitled for the benefit of the exemption notification No.152/2009-CUS, dated 31.12.2009. It is further submitted that the Tariff Act does not contain any tariff entry as “train sets”, as alleged by the petitioner and on investigation, it was found that the petitioner inspite of having specific knowledge of the tariff entry CTH 86031000 and CTH 86050000 had deliberately mis-declared the goods with an intention to evade payment of duty. It is submitted that when the petitioner's invoices makes a clear distinction with regard to the price and the nature of goods imported by L&T MR sold by Hyundai, the action of filing the bill of entry as same for the both the goods lacks bonafide. Further, it is submitted that without filing an appeal before the CESTAT under Section 129A of the Act, the petitioners have filed the present Writ Petitions, which are not maintainable. It is further submitted that the issue involves classification of goods and this Court even in exercise of its appellate jurisdiction under Section 130 of the Customs Act, shall not entertain the appeal in view of specific exclusion. When the appellate jurisdiction of the High Court under Section 130 of the Customs Act, is excluded the special original jurisdiction cannot be invoked. In

support of such contention, reliance was placed on the *Commissioner of C.Ex.&S.Tax., Raipur, vs. Shri Consultants Pvt., Ltd.*, reported in (2015) 320 ELT 328; *Commissioner of Customs (Exports), Chennai vs. D.S.Metal (P) Ltd.*, reported in (2015) 323 ELT 328; *United Bleachers Ltd., vs. CEGAT, Chennai* reported in (2011) 269 ELT 9 and W.P.No.1276 of 2010, dated 17.11.2014 (*M/s.T.T.Krishnamachari & Co., Vs. UOI*).

8. Further, it is submitted that the classification of goods are not same internationally and the GATT cannot be pressed into service, when the domicile law is different. In support of such contention, reliance was placed on the decision of the *Sony India vs. CTO*, reported in (2009) 245 ELT 100, which was affirmed by the Hon'ble Supreme Court in the case of *Sony India Pvt., Ltd. vs., Commercial Tax Officer and Anr.*, reported in (2009) 23 VST 1 (SC), with a direction to the appellant to file an appeal. Further, it is submitted that the second respondent DRI has jurisdiction to issue show cause notice by virtue of the amendment in 2011. To support such contention, reliance was placed on the decisions in the case of *Abhishek Mundhra vs. A.D.G., D.G., of Revenue Intelligence, Chennai* reported in (2015) 318 ELT 245 and *Executive Dir., F.Seyad Rabbani, Seyad Cotton Mills Ltd., vs. Addl., Dir., Dept., of Revenue Intelligence, Chennai* reported in (2015) 325 ELT 721. Further, it is submitted that interpretation of the terms and conditions in any agreement

involves adjudication of disputed facts and can only be subject matter of appeal or revision before the appropriate authority and this Court exercising jurisdiction under Article 226 of the Constitution will not adjudicate such disputed facts. The tariff entry of the importing country, namely, India, is different and the duty is leviable according to such tariff entry and not relating to the tariff entries of other countries. Thus, the present dispute being one relating to classification of goods, the petitioner should necessarily avail the appellate remedy. To support such a contention, reliance was placed on the decision of the Hon'ble Supreme Court in the case of *UOI vs. Zalcon Electronics* reported in (2010) 225 ELT 490.

9. Mr.T.Pramod Kumar Chopda, learned Senior Panel counsel for the Customs while adopting the arguments of the learned Panel counsel for DRI referred to the counter affidavit filed by the respondents to the additional grounds raised by the petitioner by placing reliance on the classification ruling rendered by the World Customs Organisation (WCO), in 57th session of the Harmonized System Committee, wherein according to the petitioner, the electric multiple unit has to be classified as a single unit under CTH 8603 as opposed to each car assessed separately before March 2016 in the impugned order, dated 25.09.2015. It is submitted that the contention raised by the petitioner is misconceived, as it is not relevant to the period of import, which

being prior to March 2016, as the bill of entry was filed on 13.10.2014, after which the order of adjudication has been passed on 25.09.2015. The settled law is that the applicable rate of duty is as on the date of import and clearance of goods by filing the bill of entry, which is admittedly on 13.10.2014, whereas the opinion of the Harmonized System Committee was in March 2016. Further, it is submitted that the classification opinions of WCO are not binding and the classification of the commodity has to be decided taking into consideration the statutory rules for interpretation, chapter notes, section notes, tariff ratings.

10. Heard the learned counsels appearing for the parties and perused the materials placed on record.

11. The petitioner L&T MR has been constituted as a special purpose vehicle registered under the Companies Act in India to design, build and operate Metro rail system for the city of Hyderabad, which will be transferred to Government of Andhra Pradesh after the concession period of 35 years. As a part of the project, the passenger rail coaches were imported describing them as 'Train sets', from Hyundai. The DRI caused investigation and opined that the train sets consist of two self-propelled coaches and one non-self-propelled coach. According to the DRI, two self-propelled coaches are classifiable under CTH 8603 1000, dutiable under 'NIL', rate in the light of the exemption

notification No.152/2009-CUS, dated 31.12.2009, (Sl.No.886). The non self-propelled coach is classifiable under CTH 8605 0000, dutiable at 3.75% *ad-volrum*, when imported from Republic of Korea under the Comprehensive Economic Partnership Agreement, (CEPA). The investigation lead to the issuance of show cause notice, dated 11.05.2015, proposing to reclassify the ELS-PR Railway coach-TC (Coach), as not self-propelled passenger coaches under CTH 8605 of the first Schedule to the Tariff Act, proposing to levy customs duty, proposing confiscation and imposition of penalty.

12. Both L&T MR and Hyundai submitted their written submissions on 07.08.2015, *inter alia* contending that the imported trailer coaches are classifiable under CTH 8603 and not under 8605, by stating that the main feature of the vehicle is that they are fitted with the control cab either one or both ends or in a raised position in the middle and the electrical and the electrical energy is received from Stationary external sources and the trailer cars are fitted with pantograph and they received electricity which is distributed to the driver motor cars and therefore, the driver motor cars and trailer cars are collectively classifiable under CTH 8603 as metro train cars. The classification has to be made based on the essential character of the goods; that identification of the value of the each car separately does not mean that the cars have to be classified under different headings; that once goods

have been cleared for home consumption redemption fine is not imposable. Further, the imported goods can no longer be confiscated and the same cannot be done even by invoking the power vested with the Commissioner under Section 129D of the Customs Act; that the penalty cannot be levied and the proposal in the show cause notice is not sustainable. Personal hearing was afforded to the authorised representatives of both the L&T MR and Hyundai. The first respondent has adjudicated the case and passed the impugned order holding that the trailer coaches are classifiable under CTH 8605 and not as CTH 8603, as classified by the petitioner and confirmed the proposal in the show cause notice by levying customs duty, ordering confiscation with option to redeem on payment of redemption fine and apart from imposition penalty on both the petitioners.

13. Mr.C.Natarajan, fairly submitted that as against the impugned order, the petitioner has a remedy of an appeal before the CESTAT, but the petitioner is before this Court challenging the impugned order as there is serious error in the decision making process. As pointed out earlier, though several grounds have been raised by the petitioners in the affidavit filed in support of the Writ Petition, two issues alone were canvassed before this Court by Mr.C.Natarajan. The first being that due weightage should be given to the treaty obligations entered into between India and Korea and the classification done by the Korean

Customs cannot be ignored and the opinion of the World Customs Organisation based on the civil complaint is required to be taken into consideration, though it has been rendered on 01.01.2017. Therefore, it is his argument that the matter should be remanded to the Commissioner for fresh adjudication.

14. Mr.V.Sundareswaran, on the other hand, would submit that the Writ Petition is not maintainable, misclassification is deliberate and the trailer coach is to be classified as a non-self-propelled coach under CTH 8605 and not under CTH 8603 and invoices being raised separately and it is clear that both the petitioners were aware of the proper classification and filing the bill of entry under CTH 8603 for both the coaches clearly lacks bonafide.

15. Before I embark upon an exercise to consider the submissions made by Mr.C.Natarajan, it is to be pointed out that the issue in these Writ Petitions involves classification of goods, as to whether the classification as adopted by the petitioner was proper or the stand taken by the department in the order of adjudication is correct.

16. Under Section 130(1) of the Customs Act, an appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal on or after 01.07.2003, not being an order relating, among other things, to the determination of any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment. Thus, even in exercise of

the appellate jurisdiction, the Division Bench of this Court should be satisfied that the case involves a substantial question of law when an appeal is filed against an order passed by the appellate Tribunal, CESTAT. The jurisdiction of the Court is excluded when such an order of CESTAT relates to determination of the rate of duty of customs or the value of the goods for the purposes of the assessment.

17. The moot question would be if the appellate jurisdiction of this Court has been specifically excluded, when it pertains to determination of the value or regarding the classification of the goods (good), whether this Court exercising jurisdiction under Article 226 of the Constitution would be justified in testing the correctness of the impugned order.

18. In the case of ***Commissioner of Customs (Exports), Chennai vs. D.S.Metal (P) Ltd.***, (supra), an appeal was preferred by the Revenue challenging the order passed by the CESTAT setting aside the demand by allowing the benefit of an exemption notification in favour of the respondent importer having fulfilled post importation condition of submitting end-use certificate. The Division Bench while considering as to whether appeal was maintainable on such an issue referred to the decision of the Hon'ble Supreme Court in the case of ***Navin Chemicals Manufacturing and Trading Co., Ltd.***,

vs. Collector of Customs, reported in **1993 (68) ELT 3 (SC)** and held that the issue which arise for consideration is what will be the rate of duty that is payable by the importer, but for the notification in question and by applying the law in the case of ***Navin Chemicals Manufacturing and Trading Co., Ltd.***, (supra), and taking note of Section 130 of the Customs Act, it was held that the appeal is not maintainable, as the question has a direct and proximate relationship to the rate of duty and to the value of goods for purposes of assessment.

19. In the case of ***United Bleachers Ltd., vs. CEGAT Chennai*** (supra), this Court considered whether a Writ Petition was maintainable challenging an order passed by the CEGAT, in which the Revenue raised a preliminary objection contending that as against the order of the CEGAT, the petitioner ought to have approached the Hon'ble Supreme Court by way of an appeal under Section 35(L) of the Central Excise Act, 1944. The Court sustained the objection raised by the Revenue and held that under Section 35(G) of the Central Excise Act, there is a specific embargo for this Court to entertain the appeals with regard to the dispute relating to the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment.

20. By applying the law laid down in the above mentioned decisions, the

only conclusion that can be arrived at is to hold that the Writ Petition is not maintainable and the petitioner has to avail the remedy provided under the Act. This is sufficient to dismiss the Writ Petitions and relegate the petitioners to appellate remedy provided under Section 129A(1) of the Customs Act.

21. Mr.C.Natarajan, submitted that the decision making process being flawed, the Court can exercise jurisdiction under Article 226 of the Constitution of India. The decisions in *Sawarn Singh* and *P.V.Hanumantha Rao* (Supra), states that the power under Article 226 could be exercised when the inferior Tribunal has acted on evidence, which is legally inadmissible or has refused to admit admissible evidence. Both the decisions did not arise under the provisions of the Customs Act, but under the Punjab Security of Land Tenures Act, and Andhra Pradesh Land Grabbing Prohibition Act, respectively. These two enactments do not contain an embargo as contained in Section 130(1) of the Customs Act.

22. The argument is that when the petitioner placed the documents pertaining to the classification of the goods as classified by the Korean Customs, the first respondent was not justified in stating that he did not call for such opinion or documents and it will not bind them. It may be true that the findings given by the first respondent in paragraph 29 of the impugned order is not well worded. The sentence “the department has not called for any

such clarification or advice from them” should not be read in isolation, but should be read in conjunction with the other observations made by the first respondent in the earlier and subsequent paragraphs. If it is so read, the picture that emerges is the adjudicating authority came to the conclusion, that the classification as done by the Korean Customs will not bind them and they are bound by the Indian Customs Laws and the Tariff Act and the Rules and Regulations governing the classification. Therefore, it cannot be stated that the decision making process is flawed on account of an observation made in paragraph 29 of the impugned order. Therefore, on that ground, this Court cannot exercise its jurisdiction under Article 226 of the Constitution.

23. Much emphasis was laid on the India Korea Comprehensive Economic Partnership (Treaty) to demonstrate that both the countries should assist each other in the tariff classification, valuation and determination of origin of goods for the purpose of preferential tariff treatment and each party shall notify the other party in writing, the classification of the goods of the other party determined by it and the party shall consult to address the discrepancies regarding the classification between the parties. Therefore, it is submitted that the classification of the goods by the Korean Customs cannot be ignored. Further, it is submitted that the World Customs Organisation has rendered its opinion and though it has been published in the Compendium of Classification

Decisions on 01.01.2017, this material has to be considered by the Adjudicating Authority and the petitioner should be given an opportunity to put forth the same before the authority.

24. Admittedly, the opinion of the Harmonized System Committee was rendered much after the impugned order of adjudication. Therefore, a material which was available to the petitioner much after the order of adjudication, cannot be pressed into service for setting aside the impugned order and seeking for a remand before the same authority for *de nova* consideration, at best, it can be a ground that could be raised in an appeal filed against the impugned order.

25. Mr.C.Natarajan, had elaborately taken me through the nature of goods, which were imported to establish that the Electric Multiple Units (EMU) is a complete set of Article in itself and designed to function as a whole and it is appropriate to classify the entire EMU in Chapter heading 8603. As per the General Rules for interpreting of Harmonized System, Rule 2(a), complete or finished Article presented unassembled or disassembled are to be classified in the same heading as the assembled article. Therefore, the trailer cars have essential character of the complete metro train cars being its essential components and should be classified under HS code 8603. Further, it was

submitted that three coaches are inextricably connected and can become functional only they are put together and the first respondent is not correct in treating the middle car identified as trailer coach to fall under CTH 8605 and several factual details were placed before this Court to state that the impugned classification is erroneous. The factual submissions made before this Court to describe that all the three coaches constitute a complete set of article and it is inextricably connected is purely a question of fact and this cannot be adjudicated in a Writ Petition, more so when, such dispute cannot be considered even by a Division Bench of this Court under Section 130(1) of the Customs Act. Therefore, the factual matrix relating to the classification of goods has to be necessarily agitated before the appellate forum.

26. The binding effect of the opinion rendered by the Korean Custom Authorities is an arguable issue. Admittedly, there has not been any amendment to the schedule to the Tariff Act, and the relevant Tariff Heading and description of goods as existing on the date of import is as hereunder:-

Tariff Heading	Description of goods	applicable rate of duty to petitioner
86031000	Self propelled railway or tramway coaches, vans and tracks, other than those of heading 8604	NIL
86050000	Railway or tramway passenger coaches,	

not self propelled, luggage vans, post office coaches and other special purpose railway or tramway coaches not self propelled (excluding those of heading 8604)	3.5%
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27. Thus, the proper officer of customs while assessing a bill of entry has to be necessarily guided and mandatorily to follow the appropriate tariff as per the Customs Tariff Act and collect duty at the applicable rate. If on the contrary, pursuant to a bilatory treaty, the Government had amended the tariff heading, it would have been a different matter. Therefore, this issue has to be agitated by the petitioner before the appellate forum and not in a Writ Petition.

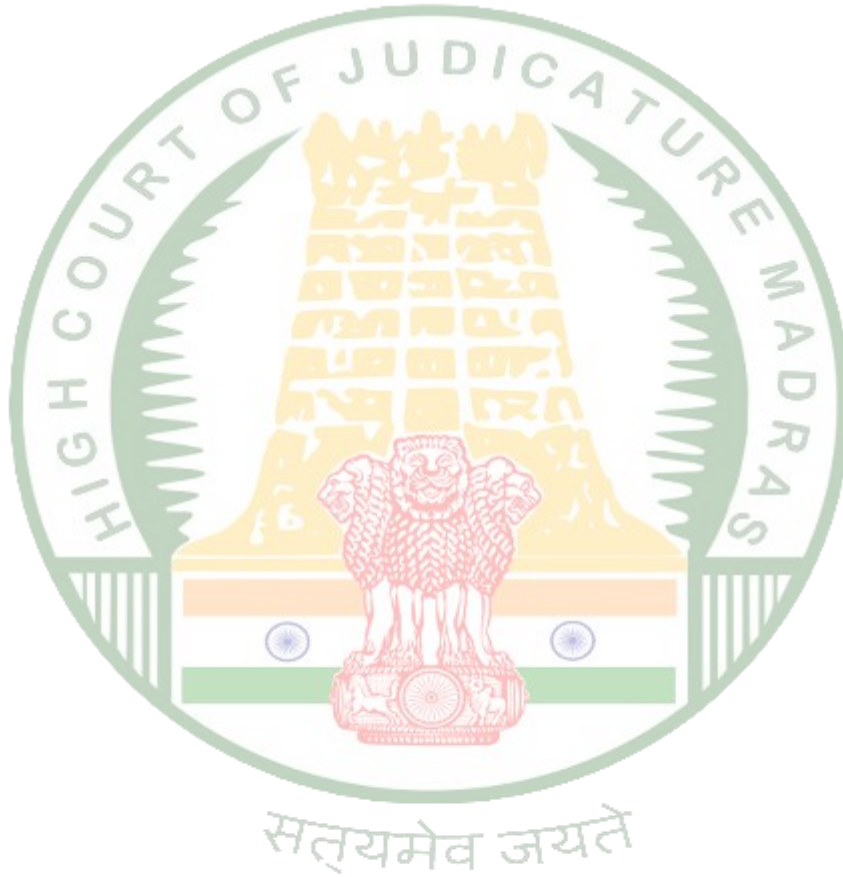
28. Thus, for all the above reasons on the two grounds raised by Mr.C.Natarajan, this Court is not convinced to exercise its extraordinary jurisdiction under Article 226 of the Constitution. For the above reasons, the Writ Petitions are held to be not maintainable and the same are dismissed. It is left open to the petitioners to prefer an appeal to the CESTAT, if so advised. In the event an appeal is presented before the CESTAT, the CESTAT shall exclude the period during which these Writ Petitions were pending i.e., from 14.12.2015, till the date of receipt of certified copy of this order while computing limitation. No costs. Consequently, connected Miscellaneous Petitions are closed.

14.09.2017

pbn

Index:yes/no

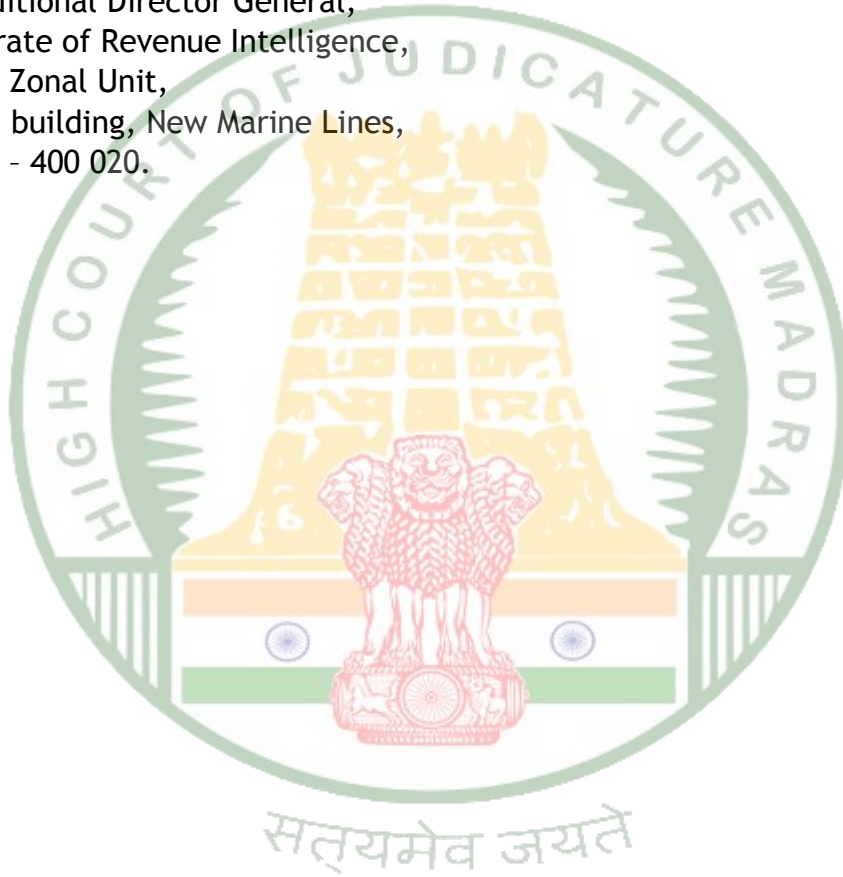
Note: Note: Registry is directed to return the original impugned order after substituting the same with the certified copy.



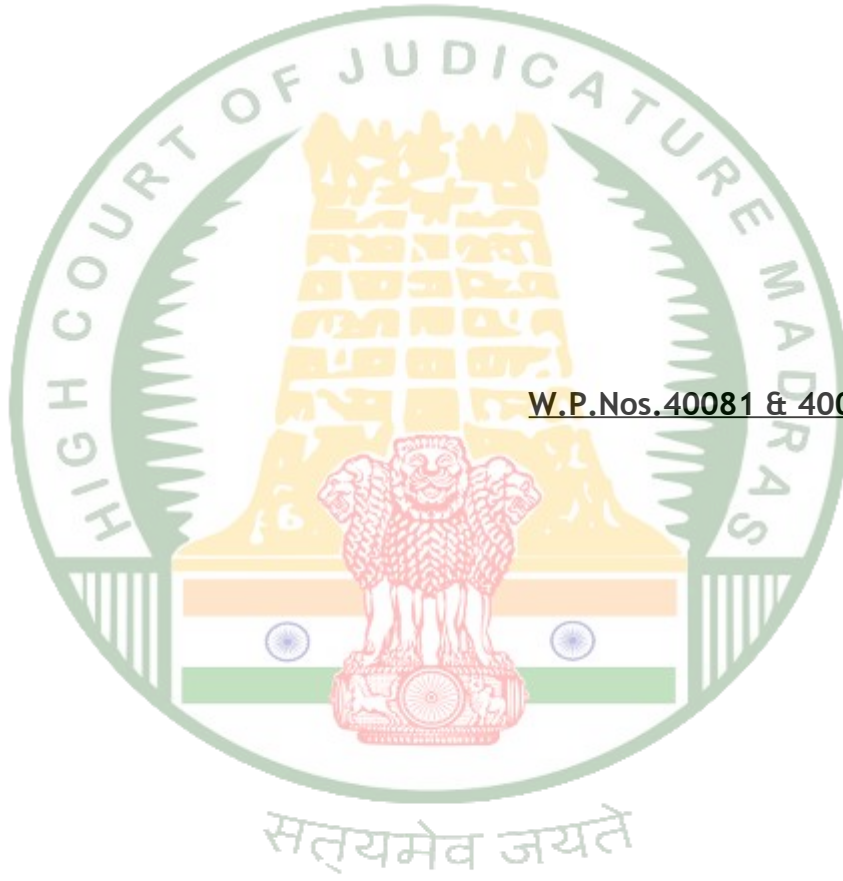
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To

- 1.The Commissioner of Customs,
Chennai Commissionerate -II,
Custom House, No-60, Rajaji Salai,
Chennai - 600 001.
- 2.The Additional Director General,
Directorate of Revenue Intelligence,
Mumbai Zonal Unit,
13 - UTI building, New Marine Lines,
Mumbai - 400 020.



WEB COPY



W.P.Nos.40081 & 40082 of 2015

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14.09.2017