IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2017

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.5579 of 2015 & M.P.No.1 of 2015

M/s Caterpillar India Pvt. Ltd.,
represented by its Director,
7th Floor, International Tech Park,
Taramani Road, (Ascendas)
Chennai - 60 113 ...Petitioner

Vs.

1. Union of India,
Rep. By its Secretary
Ministry of Finance,
Departmental of Revenue
New Delhi - 110 001

2. The Commissioner of Customs (Appeals-II)
Customs House, 60,Rajaji Salai,
Chennai - 600 001.

3. The Commissioner of Customs (Chennai-III)
Customs House, 60,Rajaji Salai,
Chennai - 600 001.

4. Central Board of Excise & Customs,
Ministry of Finance(Department of Revenue)
Represented by its Chairman, North Block
New Delhi - 110 001. ...Respondents

Prayer: The writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for records relating to Order-In-Appeal C.Cus.II.No.214/2014 dated 21.11.2014 issued by the second respondent, quash the direction to collect 5% EDD and pass orders.

For Petitioner : Mrs.R.Charulatha
for Ms. Lakshmi Kumaran
For Respondent - 1 : No appearance
For Respondent 2-4 : Mr.K.S.Ramasamy

O R D E R

Heard Mrs.R.Charulatha, learned Counsel appearing on behalf of Ms.Lakshmi Kumaran, learned Counsel on record for the petitioner and Mr.K.S. Ramasamy, learned standing counsel appearing on behalf of the respondents 2 to 4 and perused the materials placed on record including the counter affidavit filed by the second respondent and the rejoinder filed by the petitioner.

2. The dispute in this case lies in narrow compass and it is sufficient to refer to the following facts to consider as to what would be the relief the petitioner would be entitled to in this writ petition.

3. The petitioner is a company incorporated in the year 2000 as subsidiary of M/s. Caterpillar Commercial SA, Belgium. They are engaged in the manufacture of construction and mining equipments, diesel and natural gas engine, natural gas turbines and diesel-electric locomotives. The petitioner imports raw materials, components and spare parts from their group companies abroad for use in the manufacture of the aforesaid final products in India.

4.The value declared by the petitioner in respect of the imports made from the related entities were examined every three years and were accepted by the Special Valuation Branch (SVB) during 1987. A review of the order was done by the SVB in 2012. In the year 2011, the petitioner is stated to have taken over another company by name M/s.F.G.Wilson, which also had an order from the SVB in its name vide Order-in-Original No.13625 of 2010 dated 24.11.2010. The said order was due for renewal in 16.9.2013. The SVB took up the renewal of its order of the petitioner and M/s.F.G.Wilson together in the year 2013 and an order was passed in Order-in-Original (OIO) No.21031/2013 dated 13.6.2013 accepting the declared value and this order was valid for a period of three years from 16.09.2013 to 15.09.2016.

5.The Department challenged the said order by filing a statutory appeal under Section 128 of the Customs Act, 1962 before the second respondent. The said appeal was disposed of by setting aside the Order-in-Original and remanding the matter back to the Lower Adjudicating Authority (LAA) for a fresh examination. The second respondent, while remanding the matter, directed to collect Extra Duty Deposit (EDD) at 5% from the petitioner in respect of the Bill of Entries filed by them. This writ petition has been filed challenging that portion of the direction issued by the second respondent for collection of EDD.

6. The facts disclose that the petitioner succeeded before the LAA and an order was passed on 13.06.2013 in their favour accepting the value declared by the petitioner.

7.Though the Department filed a review petition under Section 129D(2) of the said Act before the Commissioner of Customs (Imports), vide order dated 03.9.2013, the Department was directed to file an application before the Commissioner (Appeals) under Section 129(D) of the said Act, pursuant to which, the Department namely the second respondent filed an appeal before the first respondent on 05.9.2013.

8. The Appellate Authority found that LAA has not gone into the aspect with regard to the impact of Rule 10(1)(c) of the Valuation Rules, 2007 and therefore, the matter requires re-examination and verification covering both direct payment and indirect payments to find out if they are related to imported goods and about the condition of sale. Therefore, the Appellate Authority concluded that the LAA has not thoroughly examined the issues on the acceptance of the transaction value as well as on the addition under Rule 10(1)(c) of the rules. Accordingly, the Order-in-Original was set aside and the LAA was directed to examine the issue afresh based on the discussion contained in the order passed by the first respondent dated 21.11.2014.

9.On a perusal of the said order, it is found that the Order-in-Original was set aside and the matter was remanded for a fresh consideration. In other words, it is an open remand to consider the issues, as the Appellate Authority found that the LAA has not gone into important aspects of the matter. When such is the case, adding a rider to that order by directing the petitioner to pay EDD equivalent to 5% value in all the Bills of Entry filed by them would be without jurisdiction, as the lis before LAA is yet to be adjudicated and the matter is at the stage of remand. Therefore, the imposition of such duty of EDD equivalent to 5% on all the Bill of Entry filed by the petitioner would be beyond the scope of the order passed by the first respondent, as the petitioner succeeded before the LAA.

10.An identical issue was considered by this Court in the case of Terumo Penpol Ltd. Vs. Commissioner of Customs (Appeals) [W.P.No.33319 of 2014 dated 29.4.2015], in which, that portion of the order directing payment of EDD equivalent to 5% of the assessment value was deleted and the Adjudicating Authority was directed to decide the issue after giving a reasonable opportunity to the petitioner.

11.In the light of the above, the writ petition is allowed, the direction issued by the first respondent to collect 5 % of the EDD in all the Bills of Entry filed by the petitioner stands set aside and the second respondent is directed to take up the case for adjudication pursuant to the directions issued by the first respondent vide Order-in-Appeal dated 21.11.2014 and afford an opportunity of personal hearing to the authorized representative of the petitioner and comply with the directions issued by the Appellate Authority by passing a speaking order on merits and in accordance with law as expeditiously as possible preferably within a period of three months from the date of a receipt of a copy of this order.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

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To.

1. Union of India,
   Ministry of Finance,
   Departmental of Revenue
   New Delhi - 110 001

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   Customs House, 60,Rajaji Salai,
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4. Central Board of Excise & Customs,
   Ministry of Finance(Department of Revenue)
   Represented by its Chairman, North Block
   New Delhi - 110 001.

+1 CC to Mr.K.S. Ramasamy, Advocate sr 84082.
+1 CC to Mr. Lakshmi Kumaran, Advocate sr 84240.

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GP(CO)
SP(19/12/2017)