

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAMWrit Petition No.5532 of 2018
and W.M.P.No.6838 of 2018

Orders reserved on 12.04.2018	Orders pronounced on 26.04.2018
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M/s.Competition Team Technology
(India) Pvt., Ltd.,
A-10, SIPCOT Industrial Park,
Irungattukottai,
Sriperumbudur – 602 105.

.. Petitioner

Vs.

1.Union of India,
Department of Revenue,
Ministry of Finance,
North Block, New Delhi – 110001

2.Asst., Commissioner of Customs,
ICD Irungattukottai,
Chennai.

.. Respondents

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Petition filed Under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to quash Order-in-Original No.02/2018, dated 23.02.2018, as it is contrary to First Schedule of the Customs Tariff Act, 1975 and the decision of the Hon'ble Supreme Court.

For Petitioner : Mr.R.Parthasarathy for
M/s.Lakshmi Kumaran & Sridharan Attorneys

For Respondents : Mr.Rajnish Pathiyil SCCG

ORDER

The petitioner has filed this Writ Petition challenging the order passed by the second respondent in Order-in-Original, No.2 of 2018, dated 23.02.2018, by which the second respondent vacated the protest under which the duty amount of Rs.4,03,44,922/- being the differential duty paid on the import of LCD panels (parts of television) vide 18 bills of entry for the period from 11.01.2018 to 16.02.2018 and confirmed and ordered to appropriate the said amount as duty paid under Section 17(5) of the Customs Act, 1962.

2. Mr.R.Parathasarathy, learned counsel appearing for the petitioner submitted that the classification adopted by the notification for LCD panels is *ultra vires* the principles of classification prescribed by General Rules of interpretation and first Schedule of the Customs Act, 1975 and in this regard, the petitioner has filed separate Writ Petition seeking for a declaration to declare the said classification as *ultra vires*.

It is submitted that LCD panels are classifiable under CTH9013 following the Rule 3(a) of the General Rules of interpretation and Note I of Section XVI. Since Liquid Crystal Devices is a specific description of LCD panels, classification under CTH 9013 is preferred over other general classification. It is further submitted that there are several Judicial pronouncements which have decided regarding the classification of LCD panels, namely, ***Secure Meters vs. CC, New Delhi, [2015 (319) 565 (SC)]*** and the decisions of the Tribunal in the case of ***Samsung India Electronics Pvt., Ltd., vs. Commissioner of Customs (Noida) [2015 (326) ELT 161 (Tri-Del); Samsung India Electronics Pvt., Ltd., vs. Commissioner of Customs (Air), [2016 (337) ELT 87 (Tri-Chennai)]***. Further, it is submitted that the mere fact that the petitioner was classifying the product under CTH8529, prior to 05.01.2018, cannot be the reason for the insistence on classification of the product under CTH 8529. Further, it is submitted that appeal remedy available is not efficacious and if the petitioner is to challenge the reassessment, a sizeable amount equivalent to 7.5% of the disputed duty has to be paid, which is an onerous condition. The learned counsel made elaborate reference to the relevant chapter heading under which the product has to be classified and referred to the representation given by the petitioner dated 05.01.2018, regarding the classification issue.

The learned counsel referred to the decision of this Court in the case of ***Senthil Raja Metal vs. CTO [1990 (79) STC 38]***, wherein it has been held that so long as the order of the Tribunal is not set aside, the Appellate Assistant Commissioner is bound to give effect to it and failure to do so on the ground that the Department has filed appeal will be really a contempt of the Tribunal's order. To the same effect, the decision in the case of ***Pushpanjali Silk Pvt., Ltd., pvt., Ltd., vs. Chief Commissioner of Customs, [2006 (203) ELT 21 (Madras)]*** was also referred to. Referring to the decision of the Hon'ble Supreme Court in the case of ***Union of India vs. Kamalakshi Finance Corporation Ltd., [1991 (55) ELT 433]***, it is submitted that when there is a decision of the appellate authority, judicial discipline warrants that the lower authority follows the said decision. On the above ground, the learned counsel submitted that the impugned order calls for interference.

3. Mr. Rajnish Pathiyil, learned Senior Standing counsel appearing for the respondent referring to the counter affidavit filed in the Writ Petition and submitted that the impugned order is an appealable order that the petitioner was entitled to file an appeal before the Commissioner of Customs (Appeals) and that the remedy is effective

and efficacious. It is further submitted that the decision in the case of ***Samsung India Electronics Pvt., Limited vs. Commissioner of Customs (Noida)***, (supra), has been appealed against and the Special Leave Petition is pending before the Hon'ble Supreme Court in Civil Appeal Nos.6518-6538 of 2016 and hence, the order has not attained finality.

4. In so far as the ***Secure Meters*** (supra), the same is factually different from the present case and has no application to the facts of the present case. Further, it is submitted that the petitioner has apparently made it clear that the change of stand to classify the imported goods now under CTH9013 from the earlier classification under CTH8529 was only because there was no revenue implication under Section CTH 8529, which was covered under exemption notification No.12 of 2012. It is submitted that the petitioner has availed the benefit of exemption for all these years and now cannot classify the very same imported goods under CTH 9013, when all along the description and adoption of tariff heading, which is left to the decision of the importer was CTH 8529. It is submitted that the petitioner is into the business of manufacture of television sets since its incorporation i.e., 16.12.2014, and has been for the past three years importing and clearing LCD panels under the Tariff

Heading 8529 which is the correct tariff heading in respect of the cleared imported goods. It is also submitted that as a matter of fact the petitioner who had cleared two consignments of LCD panels, had been classifying the same under CTH 8529 even after the enhancement of duty to 7.5%.

5. With regard to the decision in the case of **Secure Meters** (supra), it is submitted that the component involved was LCD importer for the purpose of using the same in manufacture of electricity supply meters (energy meters) and the Hon'ble Supreme Court held that LCD is imported by the appellant therein classifiable under chapter heading 9013.80, i.e., other devices, appliances and instruments. It is further submitted that the change of stand on the part of the petitioner is only because of the notification, dated 02.02.2018, which brought about an increase in tariff at 15% vide Financial Bill 2018 and only to avoid this duty, the present classification has been changed by the petitioner. It is further submitted that the headings which provide most specific description shall be prepared over the heading providing general description and in the present case, the imported goods are classifiable under CTH8529, as the LCDs are imported for the purpose of manufacture of colour televisions and the petitioner for past three years

has been classifying the product, as under CTH 8529. It is further submitted that the reliance placed on the decision of the Gujarat High Court in the case of ***Rolex Rings Pvt., Ltd vs. UOI., [2018-VIL-28-Guj-Cu]***, is not sustainable, as the facts of the said case, were entirely different. The learned counsel placed reliance on the decision of the Hon'ble Supreme Court in the case of ***The Assistant Commissioner of Sales Tax. vs. P.Kesavan & Co., [1995 Supp (4) SCC 709]*** and the decision of the United States Court of Appeals, Federal Circuit in the case of ***Sharp Microelectronics Technology Inc., vs. The United States [19ITRD 1515]***.

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

7. The first hurdle that the petitioner has to cross, is to justify their action in approaching this Court under Article 226 of the Constitution without availing the appellate remedy against the impugned order. The reason for not availing the appellate remedy, as put forth by the learned counsel for the petitioner is by contending that it is not efficacious, as because, the issue involved in the petitioner's case is squarely covered by the decision of the Tribunal in the case of

Samsung India Electronics Pvt., Limited vs. Commissioner of Customs (Noida), (supra) and in the appeal filed by the Revenue before the Hon'ble Supreme Court, there is no order of stay and mere pendency of the appeal, is no ground to refuse to follow the decision of the Tribunal. Reliance was also placed on the decision of the Hon'ble Supreme Court in the case of **Secure Meters** (supra), stating that the correct classification for the product imported by the petitioner is CTH 8529 and the same has to be accepted.

8. Firstly it has to be pointed out that since the issue involved with regard to the classification of the product imported, the Division Bench of the High Court exercising appellate jurisdiction over the orders of the CESTAT, is denude of powers to decide a classification dispute, as appeal lies to the Hon'ble Supreme Court. Therefore, the petitioner cannot seek for a direction from this Court to rule on a classification dispute.

9. The issue as to whether the decision in **Samsung India Electronics Pvt., Limited** (supra), or **Secure Meters** (supra), would apply to the petitioner's case is a factual issue, which requires interpretation of the product imported by the petitioner. On facts, it is

admitted that the petitioner has been clearing the very same LCD panels by classifying the same under CTH 8529 for over three years. The question would be as to whether the petitioner at this juncture can claim that the imported goods are classifiable under CTH9013. The matter clearly involves appreciation of the factual position, what is the nature of the product imported by the petitioner etc. Undoubtedly, such an exercise cannot be undertaken by a Writ Court. Therefore, to state that judicial discipline demands that the respondent ought to have followed the decisions of the Tribunal, is again a question, which cannot be gone into by the High Court, as it involves the appreciation of the factual position. The other reason given by the petitioner to by-pass the appellate remedy is by contending that deposit of 7.5% of the disputed duty for preferring an appeal is an onerous condition. The mandatory statutory condition to pre-deposit 7.5% of the duty demanded has been upheld. Therefore, the petitioner cannot seek for a relief contrary to the statutory provision.

10. The petitioner seeks to place reliance on the decision of the High Court of Gujarat in the case of **Rolex Rings Pvt., Ltd** (supra), wherein the Court took into consideration that in the case of the petitioner therein, the Tribunal had to threadbare examine the entire

issue and came to an independent conclusion based on voluminous evidence produced by the petitioner therein and therefore, held that relegating the petitioner to the appellate remedy would be futile and the condition to deposit a sizeable amount with the department is an onerous condition. With great respect to the views expressed in **Rolex Rings Pvt., Ltd**(supra), this Court cannot apply the decision to the case on hand, as the petitioner seeks to place reliance on the decision rendered in the case of **Samsung India Electronics Pvt., Limited** (supra), whereas the case before the High Court of Gujarat arose out of a decision in the assessee's own case, which was decided by the Tribunal.

11. I have my reservation in accepting the view of the High Court of Gujarat, especially when, the Court had no jurisdiction to consider the correctness of the order of the Tribunal, as an appeal was maintainable against the said order only before the Hon'ble Supreme Court. Therefore, the said contention advanced by the learned counsel for the petitioner to by-pass the appellate remedy does not merit acceptance. For the above reasons, the Writ Petition is held to be not maintainable.

12. In the result, the Writ Petition is dismissed. It is open to the petitioner to file an appeal, if so advised. No costs. Consequently, connected Miscellaneous Petition is closed.

26.04.2018

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Index : Yes/No
Speaking/Non speaking order

Note:Registry is directed to return the original impugned order to the learned counsel for the petitioner.

To

1.Union of India,
Department of Revenue,
Ministry of Finance,
North Block, New Delhi – 110001

2.Asst., Commissioner of Customs,
ICD Irungattukottai,
Chennai.

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T.S.SIVAGNANAM, J.

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Pre-delivery order in
Writ Petition No.5532 of 2018

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