IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition Nos.18142 and 18143 of 2018
&
W.M.P.Nos.21433 to 21436 of 2018

M/s.Erbis Engineering Co. Ltd.,
Represented by its Authorized Person
39, Second Main Road
R.A.Puram
Chennai- 600 028 .. Petitioner in both petitions

-vs-

1. The Commissioner of Customs
ACC-Meenambakkam
Chennai- 600 027

2.The Assistant Commissioner of Customs (Group 5B)
ACC Meenambakkam
Chennai - 600 027 ... Respondents in both petitions

PRAYER in W.P.No.18142 of 2018: Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records of the case impugned assessment of Bill of Entry No.6954046 dated 26.06.2018 and to quash the same and consequently direct the respondents to assess the goods covered under the said Bills of Entry under Schedule II of IGST Notification No.1 of 2017 - Integrated Tax (Rate) dated 28.06.2017 at the rate of 12% of IGST.

PRAYER in W.P.No.18143 of 2018: Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records of the case impugned assessment of Bill of Entry No.7052970 dated 03.07.2018 and to quash the same and consequently direct the respondents to assess the goods covered under the said Bills of Entry under Schedule II of IGST Notification No.1 of 2017 - Integrated Tax (Rate) dated 28.06.2017 at the rate of 12% of IGST.

For Petitioner in both WPs : Mr.T.Ramesh

For Respondents in both WPs : Mr.S.R.Sundar Senior Panel Counsel

ORDER

Heard Mr.Y.Ramesh, learned counsel for the petitioner and Mr.S.R.Sundar, learned Senior Panel Counsel appearing for the respondents.

2. The petitioner has filed these writ petitions challenging the assessment of the Bills of Entry filed by the petitioner under particular head and not under the head which the petitioner had proposed to classify the goods. Admittedly, this classification dispute cannot be adjudicated in a writ petition. Necessarily the petitioner has to work out his remedy in terms of the provisions of the Customs Act.

3. the written instruction given by the Assistant Commissioner of Customs (Group 5B), Chennai states that the Bills of Entry filed were assessed in respect of the items under the same classification as claimed by the importer, but imposing IGST under SI.No.453 of Schedule III of Notification No.01/2017.

4. In the light of the said position, the petitioner should be given an opportunity to contest such decision. Therefore, unless a speaking order is passed, the petitioner would not be in a position to contest the levy of IGST under SI.No.453.

5. Therefore, there will be a direction to the second respondent to issue a show-cause notice and afford an opportunity of personal hearing to the petitioner and pass a speaking order on merits and in accordance with law. Since goods which have been imported are high valued medical and diagnostic equipments, the second respondent is directed to issue show-cause within two weeks from the date of receipt of a copy of this order and on the petitioner responding to the notice, adjudication can be completed as early as possible and in any event, within a period of four weeks from the date on which the petitioner submits their reply to the show-cause notice.

The writ petitions are disposed of with the above drection. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-IX)

// True Copy//

Sub Assistant Registrar

To

1. The Commissioner of Customs
   ACC-Meenambakkam
   Chennai- 600 027

2. The Assistant Commissioner of Customs (Group 5B)
   ACC Meenambakkam
   Chennai - 600 027

+2 cc to Mr.S.R.Sundar, Advocate SR.No.52980 & 52979

Writ Petition Nos.18142 and 18143 of 2018

NRL(CO)
SMI/24.08.2018