IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.04.2018

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.Nos.2642 and 2643 of 2006
And
W.P.M.P.Nos.2751 to 2754 of 2006 and
W.V.M.P.Nos.198, 199 and 253 of 2007

M/s.Transasia Bio-Medicals Ltd.
Rep. by its Zonal Manager
Mr.Rajesh O.T. ... Petitioner in both W.Ps.

Vs.

1.The Union of India Rep by
its Secretary, Ministry of Finance
North Block
New Delhi 1.

2.The Deputy Commissioner of Customs,
Sea Cargo
Meenambakkam Air Port
Chennai 600 027. ... Respondents in both W.Ps.

Common Prayer:

Petitions filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the 1st respondent to delete the Tariff Entry No.902780 from the Notification No.24/2005-Cus. Dated 01.03.2005.

For Petitioner : Mr.S.S.Radhakrishnan
For Respondents : Mr.T.Pramodkumar Chopda
Standing Counsel

C O M M O N   O R D E R

The petitioner has filed these writ petitions seeking issuance of Writ of Mandamus directing the first respondent to delete the Tariff Entry No.902780 from the Notification No.24/2005-Cus. dated 01.03.2005.

2.The case of the petitioner is that the petitioner is a public limited company registered under the Companies Act, 1956, engaged in the business of import and manufacture of medical equipments and sale of such equipments in India. The petitioner company had imported medical equipment known as Hemato Analyser with standard accessories and filed five bills of entry before the second respondent dated 10.03.2005, 24.03.2005, 06.08.2005, 05.10.2005 and 21.10.2005. The second respondent has assessed the bills of entry demanding additional duty of customs at 4% in terms of Notification No.19/2005-Cus. Dated 01.03.2005 issued by the first respondent.

3.The petitioner further states that the petitioner company has imported same goods Hemato Analyser covered under the above mentioned five bills of entry and filed a fresh bill of entry dated 05.01.2006 to clear the imported consignment of Hemato Analyser and requested the second respondent to assess the bill of entry without demanding additional customs duty or permit the petitioner to pay the additional customs duty in terms of the order passed by this Court in W.P.No.10985 of 2005 etc., batch. However, the second respondent has not accepted the request of the petitioner and demanded additional duty of customs at the rate of 4% in terms of Notification No.19/2005 issued by the first respondent.

4.The petitioner further states that the second respondent demanded additional customs duty on the ground that the imported goods falling under customs tariff sub-heading 902780 is found mentioned in the customs Notification No.24/2005-Cus. dated 01.03.2005 and that the levy as per the customs Notification would be applicable irrespective of the tariff rate which is free. The said Notification No.19/2005 and Notification No.24/2005-Cus. are issued by the first respondent on the same date i.e., 01.03.2005.

5.The petitioner further states that the Notification No.19/2005-Cus imposes additional duty of customs at 4% on all goods specified under Notification No.24/2005-Cus. dated 01.03.2005 and several other Notifications. The goods imported by the petitioner is covered under exemption Notification No.24/2005-Cus. dated 01.03.2005 issued by the first respondent and therefore the second respondent is demanding additional duty of customs at 4% in terms of customs Notification No.19/2005-Cus. dated 01.03.2005.

6.The petitioner further states that the schedule to the Customs Tariff Act, 1975, providing for levy of basic customs duty is under Section 12 of the Customs Act, 1962. The imported goods falling under Customs Tariff Sub-heading 90278090 are eligible for duty free clearance and therefore, no customs duty is payable. Hence, there is no need to mention the goods in Notification No.24/2005-Cus. dated 01.03.2005 issued under Section 25 of the Customs Act, 1962. Hence the petitioner has filed these writ petitions for the aforesaid relief.

7.The learned Standing Counsel appearing for the respondents would submit that the petitioner has not challenged Notification No.24/2005-Cus. dated 01.03.2005, however, has filed these writ petitions for Mandamus directing the first respondent to delete the Tariff Entry No.902780 from Notification No.24/2005-Cus. dated 01.03.2005, which is not permissible in law.

8.The learned Standing Counsel appearing for the respondents would further submit that the petitioner has been importing Hemato Analyzer, which is classifiable under CTH 902780 and the rate of duty as per the Customs tariff is 'FREE'. However, 42% additional duty is leviable in terms of customs Notification No.19/2005 dated 01.03.2005 on all goods specified under customs Notification No.24/2005 and several other Notifications. The petitioner is connecting the levy of 4% additional duty Notification No.19/2005 stating that the said goods are eligible for duty free clearance under the customs tariff itself.

9.The learned Standing Counsel appearing for the respondents would further submit that Notification No.19/2005-Cus dated 01.03.2005 makes the position clear that as per the details furnished in the table annexed to it, additional customs duty becomes payable even in the list of goods specified inter alia in the Notification No.24/2005 dated 01.03.2005 pursuant to which, the basic customs duty on the goods had been imported. This clearly establishes that notwithstanding the exemption of basic custom duty, the additional customs duty leviable thereon had not been exempted and the same is still payable in respect of the goods in question.

10.Heard both sides.

11.In the present case, the goods imported by the petitioner were detained by the customs department on the ground of non-payment of additional duty imposed in the above said Notification. The prayer sought for by the petitioner cannot be granted for the reason that after detention of goods by the customs department, if the petitioner disputes the imposition of additional duty on the imported goods, the imposition of additional duty on the imported goods is sustainable or not can be decided on after the customs department initiate appropriate proceeding for adjudication and after hearing the same. However, till date there is no adjudication proceedings initiated in the present case. Hence, Mandamus cannot be issued against the respondents because, the respondents have the power to adjudicate the matter.

12.Further, while entertaining these writ petitions, this Court has granted interim stay and direction on condition that the petitioner pays 50% of the duty and furnishes Bank Guarantee for the balance duty.

13.In view of the above position, since the petitioner disputes the imposition of additional duty on the imported goods there must be adjudication on that issue. In view of the above, the prayer sought for by the petitioner cannot be granted at this stage. However, liberty is granted to the petitioner to work out the remedy in the manner known to law and the respondents are directed to give opportunity to the petitioner to raise all their grounds in the adjudication proceedings.

14.The writ petitions are disposed of in the above terms. No costs. Consequently, the connected miscellaneous petitions are also closed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

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To

1.The Union of India Rep by
its Secretary, Ministry of Finance
North Block
New Delhi 1.

2.The Deputy Commissioner of Customs,
Sea Cargo
Meenambakkam Air Port
Chennai 600 027.

+2cc to Mr.Hari Radhakrishnan, Advocate, SR.No.28348

+1cc to Mr.T.Pramod Kumar Chopda, Advocate, SR.No.28597

W.P.Nos.2642 and 2643 of 2006
W.P.M.P.Nos.2751 to
2754 of 2006 and
W.V.M.P.Nos.198, 199
and 253 of 2007

KJ(CO)

RRK(21/05/2018)