**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 12.04.2018**

**CORAM :**

**THE HONOURABLE MR.JUSTICE M.GOVINDARAJ**

**W.P(MD)No.4986 and 4987 of 2018**
**and**
**W.M.P.(MD) Nos.4974 to 4976 of 2018**

M/s.Accord Trading India Pvt. Ltd.
Represented by its Director M.Ahamed ... Petitioner in both petitions

Vs.

The Deputy Commissioner of Customs(Group-I)
Import Assessment
Custom House, New Harbour Estate
Tuticorin 628 004. ... Respondent in both petitions

**Prayer in W.P.(MD) No.4986 of 2018:** Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the re-assessments made by the respondent in respect of bills of entry Nos.5305622 and 5305647, both dated 21.02.2018 and quash the same and further direct the respondent to revise assessments after classifying the goods under Customs Tariff Heading 2522 1000 in terms of Order-in Appeal Nos.44 & 45/2017-TIN (Cus) dated 29.11.2017 and order consequential relief.

**Prayer in W.P.(MD) No.4987 of 2018:** Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to direct the respondent to follow the order of the Commissioner (Appeals) as contained in Order-in-Appeal Nos. 44 & 45/2017-TIN (Cus) dated 29.11.2017 in the matter of classification of imported quick lime.

For Petitioner : Mr.Hari Radhakrishnan
For Respondent : Mr.B.Vijay Karthikeyan

**O R D E R**

The petitioner is an importer of quick lime. He filed bills of entries with the respondent for clearance of quick lime. The goods were classified under under Customs Tariff Heading (CTH) 25221000. But, however, the respondent did not agree with the classification made by the petitioner company and reclassified the same under CTH 28259090. The classification under CTH 25221000 attracts 5% tax and the other heading attracts 30% tax. According to the petitioner, they challenged the order of the respondent in the year 2017, which was decided in his favour by Commissioner (Appeals) and the quick lime was assessed under CTH 25221000. While the matter stood thus, he presented the bill of entry for the year 2018, which again was classified under CTH 28259090 by the respondent. Even though the order of the Commissioner (Appeals) remains intact and not been set aside so far, the assessment made by the respondent, according to the petitioner is erroneous and inferior authority is bound to follow the order of superiors. Insofar as the respondent reassessed the goods under different heading, a direction may be sought before this Court in W.P.(MD) No.4986 of 2018 to set aside the reassessment and to follow the order in Appeal passed by the Commissioner of Customs. Another writ petition in W.P.(MD) No.4987 is also filed for a direction to follow the order of Commissioner (Appeals) in future cases also.

2.Controverting the statement made by the petitioner, the learned counsel for the respondent would submit that the order in Appeal passed by the Commissioner (Appeals) has been appealed against before the CESTAT, Madras and the said order has not reached finality and the original authority cannot be compelled to follow that order until it reaches finality.

3.Secondly, when the bill of entry is submitted and the assessment is revised by the authority, the importer shall submit his representation with regard to the same along with the records and has to challenge the assessment order to be passed before the Appellate Court. Without following the procedure making representation and exhausting alternative remedies, the petitioner cannot maintain the present writ petitions and therefore, the writ petitions are liable to be dismissed.

**W.P.(MD) No.4986 of 2018:**

4.The writ petition is as such not maintainable as there are alternative remedies available under the Act. Further, a perusal of Section 17(4) of Customs Act, 1962 reveals that on verification, examination or testing of the goods or otherwise that the self-assessment is not done correctly, the proper officer may re-assess the duty leviable on such goods. Under Section 17(5) of the Act, where reassessment under Section 17(4) of the Act is contrary to the self assessment done by the importer or exporter regarding the violation of goods, he shall make a representation to the proper authority and thereafter, a speaking order of reassessment will be passed within 15 days.

5.In the instant case, it is submitted that the importer has not submitted his representation against the reassessment for enabling the proper officer to pass a speaking order.

6.Considering the facts and circumstances of the case, without going into the merits, a direction is issued to the petitioner to make a representation to the proper officer on the reassessment made along with the supporting documents and records, within a period of two weeks from the date of receipt of a copy of this order. On such receipt of such representation, the proper officer shall pass orders, within 15 days as specified under Section 17(5) of the Act recording reasons therefor. If at all the petitioner is still aggrieved, he is entitled to avail the appeal remedies provided under the Act.

**W.P.(MD) No.4987 of 2018:**

7.The order in appeal has not reached finality. It is under appeal before the CESTAT, Madras. In such circumstances, it is not proper to direct the authorities to follow the order, which is under challenge. In such circumstances, this writ petition merits no consideration. It is accordingly dismissed.

8.Accordingly, W.P.(MD) No.4986 of 2018 is disposed of and W.P.(MD) No.4987 is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(RTI)

/True copy/

Sub Assistant Registrar

*To*

The Deputy Commissioner of Customs(Group-I)
Import Assessment
Custom House, New Harbour Estate
Tuticorin 628 004.

+ 2 CC TO MR.Hari Radhakrishnan , ADVOCATE IN SR No.61081 & 61082
+ 2 CC TO MR.B.Vijay Karthikeyan , ADVOCATE IN SR No.61183 & 61185

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KK/SV MMS/SAR 1/17/05/2018/3P/6C

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