IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2019

CORAM

THE HON'BLE Dr. JUSTICE ANITA SUMANTH

W.P.No.4098 of 2019
&
W.M.P.No.4592 of 2019

M/s.TSMT Technology India Private Limited
Rep., by its Director Mr.Lin, Hung Sen,
No.6, 8th Avenue, 1st Cross Road
Mahindra World City, Chengalpattu
Kanchipuram(D), Tamilnadu-603 004

....Petitioner

--Vs--

1. The Commissioner of Customs-II
   Custom House, No.60, Rajaji Salai,
   Chennai-600 001.
2. The Commissioner of Customs (SIIB),
   Customs House,
   No.60, Rajaji Salai, Chennai 600 001.
3. The Intelligence Officer, SIIB,
   Office of the Commissioner of Customs, Chennai-III
   Custom House, No.60 Rajaji Salai,
   Chennai-600 001.

...Respondents

PRAYER in WPs: Writ Petitions filed under Article 226 of the Constitution of India praying for a writ of Certiorarified Mandamus calling for records relating to the Seizure Memo F.No.S.Misc/12/2019 SIIB the 3rd respondent herein and quash the same as illlegal and consequently direct the respondent herein to release the goods viz., 509 Cartons of Main PCBA Module F250Y, Keypad, Front Camera, Back Camera etc., imported vide Bill of Entry No.9527476, dated 04.01.2019.

For Petitioner : Msr.A.K.Jayaraj
For Respondents : Mr.K.S.Ramasamy, CGSC

O R D E R

The petitioner, M/s.TSMT Technology India Private Limited, has filed this writ petition seeking a writ of certiorarified mandamus quashing Seizure Memo in F.No.S.Misc/12/2019-SIIB dated 25.01.2019 issued by the Intelligence Officer, SIIB, arrayed as

3rd respondent and consequently directing the respondent to release goods imported under Bill of Entry bearing No.9527476 509 containing raw materials and sub parts for the manufacture of mobile phones.

2. Heard Mr.A.K.Jayaraj, learned counsel for the petitioner and Mr.K.S.Ramasamy, learned Central Government Standing Counsel for the respondents.

3. A detailed counter dated 19.02.2019 has been filed on behalf of the respondents.

4. The petitioner has imported a consignment of main PCBA Module F250Y, Keypad, Front Camera, Back Camera and other allied goods from China. The consignment was valued at a sum of USD 2,75,805.28. A Bill of Entry was filed and clearance of the consignment was sought for Home Consumption. The petitioner had sought exemption of basic customs duty of 10% taking benefit of Notification No.57/2018 dated 02.04.2018 in terms of the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2017. The aforesaid Notification provides for an exemption of basic customs duty in respect of various products, including goods classified under CTH 85177090, being

'(a) All goods other than the parts of cellular mobile phones

(b) Inputs or sub-parts for use in manufacture of parts mentioned at (a) above'

5. The goods were received in the customs station and action was initiated by the respondent for detention of the goods on the allegation that the same were mis-declared. A seizure mahazar dated 11.01.2019 was drawn up wherein, the respondent observed that description, quantity, model number and part number in respect of all the goods imported vide subject Bill of Entry was found to tally with the declaration made in the Bill of Entry. However, the respondents, being of the view that the goods in question have been wrongly classified under CTH 85177090 and ought to have been classified under CTH 85177010 that requires the payment of Basic Customs Duty at 10%, detained the goods. The Seizure Memo states as follows:

> 'On verification of the details furnished in the Bill of Entry, it was observed that the item No.1 i.e., Main PCBA Module F250Y of the subject Bill of Entry has been classified under CTH 85177090 along with exemption notification 57/2017 Sl No.6A. Therefore, the subject goods were assessed under BCD @ 0%, SWS @ 10% and IGST @ 18%. However, it is noticed that the subject goods was wrongly classified under CTH 85177090 and is correctly classifiable under CTH 85177010 along with BCD @ 10%. As per Sl.No.6A of the Notification no.57/2017 states that the goods mentioned below:

(a) Inputs or parts for use in the manufacture of Printed Circuit Board Assembly (PCBA) of cellular Mobile Phones

(b) Inputs or sub-parts for use in the manufacture of parts mentioned (a) above

were exempted from payment of Basic Customs Duty. However, CBIC vide its Notification number 37/2018-Customs dated 02.04.2018 has amended notification No.57/2017-Customs dated 30.06.2017 so as to withdraw exemption from BCD on Printed Circuit Board Assembly (PCBA), Camera Module and Connectors, of cellular mobile phones and imposed 10% BCD on them.

As the subject goods is itself a Printed Circuit Board Assembly for mobile phone, the exemption for it is not available as per notification No.57/2017 - Customs dated 30.06.2017 as amended by Notification number 37/2018-Customs dated 02.04.2018.

In view of the above, on reasonable belief that the importer had attempted to import goods by wrongful availment of notification benefit and also by mis-declaration of customs tariff heading, the goods appears to be liable for confiscation under section 111(m) of the Customs Act, 1962 read with section 46(4) ibid are seized under the provisions of section 110 of the Customs Act, 1962.'

6. The petitioner has filed an objection to the Seizure Memo on 31.01.2019 specifically requesting the release of the goods in the concluding paragraph as below:

> " We submit that, the above goods are very urgently needed for us and demurrage and container detention charges are mounting very heavily and furthermore, the above goods being raw material for the manufacture of Main Product, we request your goodself to kindly release the goods immediately or to pass orders for Provisional Release of the goods accepting the Simple Bond and oblige."

7. Learned counsel for the petitioner states that despite the objections raised and the request for release filed as early as on 31.01.2019, there has been no move to release the goods and the petitioner is facing heavy demmurage and costs on this account.

8. Learned counsel for the respondent cites a decision of this Court in the case of Commissioner of Customs (Sea Port Import), Chennai Vs. Unistar World Trade [2009 (235) E.L.T. 770 (Mad.)] stating that the Writ Petition is itself not maintainable, since there has been no request made for release of the goods and no rejection of the same. The counter also avers that no request has been made for the release of the

goods. Both the case law cited as well as the allegation as aforesaid are not applicable/incorrect in the light of the specific request made by the petitioner on 28.01.2018, as noted by me in paragraph 6 of this order.

9. The Act provides for a procedure to be followed for provisional release of seized goods. The provisions of section 110 A of the Customs Act read as follows:

> 110A. Provisional release of goods, documents and things seized pending adjudication
>
> Any goods, documents or things seized under Section 110, may, pending the order of the (adjudicating authority), be released to the owner on taking a bond from him in the proper form with such security and conditions as the (adjudicating authority) may require.

10. Provisional release of goods in question are liable to be granted upon the assesee providing sufficient security to the Department. The dispute raised in the present case relates to mis-declaration of goods. According to the petitioner, the goods imported are exempt from the levy of BCD of 10% whereas, according to the revenue, the goods imported do not attract the benefit of Notification No.57 of 2017 and are thus not eligible to Duty exemption. The revenue impact is thus contained to 10% of the Duty along with such interest and penalty as the authorities may see fit to levy/impose, after adjudication.

11. Learned counsel for the petitioner also points out that no dispute has been raised by the authorities with respect to earlier Bills of Entry and two earlier consignments identical to the one in question and accompanied by identical declarations as in the present case were permitted to be cleared by the respondents in December 2018. Upon insistence of the authorities, the petitioner was constrained, under cover of letter dated 10.01.2019, to accept the re-classification of the earlier consignments along the lines of the classification determined by the authorities and has also paid the differential duty in respect of the aforesaid consignments. Since the earlier Bills of Entry are not a subject matter of the Writ Petition before me, I refrain from making any observation in regard to the same.

12. In the light of the discussion as above, I direct the petitioner to remit 50% of the differential duty which shall be quantified by the respondent and communicated forthwith to the petitioner. The petitioner shall also furnish a personal bond in respect of the balance of the duty. Upon receipt of proof of remittance of the 50% of duty and execution of Personal Bond for the balance 50% of Duty, the goods shall be released forthwith.

13. In the present case, no notice for adjudication has been issued to the petitioner following the seizure of the goods and the respondents are at liberty to call upon the petitioners and commence adjudication of the proceedings for classification of the goods in question.

14. The Writ Petition is disposed of in the above terms. Consequently, connected miscellaneous petitions is also closed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1. The Commissioner of Customs-II
Custom House, No.60, Rajaji Salai,
Chennai-600 001.

2. The Commissioner of Customs (SIIB),
Customs House,
No.60, Rajaji Salai, Chennai 600 001.

3. The Intelligence Officer, SIIB,
Office of the Commissioner of Customs, Chennai-III
Custom House, No.60 Rajaji Salai,
Chennai-600 001.

+1cc to Mr.K.S.Ramasamy, Advocate, S.R.No.15425
+1cc to Mr.A.K.Jayaraj, Advocate, S.R.No.15417

W.P.No.4098 of 2019
&
W.M.P.No.4592 of 2019

SJ(CO)
GSP(26/02/2019)