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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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+ **W.P.(C) 6498/2019**

AGFA HEALTHCARE INDIA PVT. LTD.

..... Petitioner

Through: Mr Bharat Rai Chandani, Mr Aneesh Mittal and Ms Shreya Sharma, Advocates.

versus

THE UNION OF INDIA & ORS

..... Respondents

Through: Ms Shiva Lakshmi, CGSC for UOI. Mr Amit Bansal and Mr Aman Rewaria, Advocates for R-2. Mr Satish Aggarwala, Senior Standing Counsel for R-3.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE ASHA MENON

ORDER

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31.05.2019

CM 27487/2019 (permission to file document)

1. In view of the submissions made therein, the application is allowed.

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2. Notice. Notice is accepted by learned counsel for the Respondents.

3. The Petitioner is aggrieved by a letter dated 3rd May, 2019 issued by the Assistant Commissioner of Customs, ICD, Patparganj, Delhi, rejecting the Petitioner's request for provisional assessment of goods under CTH-90189099. The goods imported are medical diagnostic equipment used in the health care industry. The Department is insisting that the correct

classification of the goods is CTH-84433290.

4. The Court is informed that in respect of some earlier consignments of similar goods, a show-cause notice ('SCN') dated 25th April, 2019 has been issued to the Petitioner and the adjudication proceedings pursuant thereto are pending.

5. The Petitioner is before this Court in respect of the consignments imported on the dates subsequent to those covered by the aforementioned SCN. The grievance of the Petitioner is that it is being compelled to pay the entire disputed duty without there being any provisional assessment, as requested by it.

6. The Court is unable to view the impugned letter dated 3rd May, 2019 as an order of provisional assessment. Such an order would have to actually deal with the request made by the Petitioner and give reasons as to why such a request has not been acceded to, if at all, and pass an order setting out the terms on which provisional release of the goods will be permitted.

7. Accordingly, while setting aside the impugned letter dated 3rd May, 2019, this Court directs the authorised representative of the Petitioner to appear before the concerned authority (Assistant or Deputy Commissioner of Customs), ICD, Patparganj, Delhi on 4th June, 2019 at 10.30 am. The concerned officer will consider the Petitioner's request for a provisional assessment in accordance with law and pass a reasoned order thereon not later than a week thereafter. A copy of the order will be supplied to the Petitioner within a week of the order being made. If the Petitioner is

aggrieved with such an order, it will be open to the Petitioner to seek appropriate remedies in accordance with law.

8. The petition is disposed of in above terms.

9. *Dasti* under the signatures of the Court Master.

S. MURALIDHAR, J.

ASHA MENON, J.

MAY 31, 2019
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