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02.07.2020.
d.p./s.b

W.P. 5694 (W) of 2020
(CAN 3591 of 2020)

M/s. Anutham Exim Pvt. Ltd.
-versus
Union of India & Ors.

Mr. Sanjib Kumar Mal,
Mr. Saptarshi Kr. Mal.
...For the Petitioner.
(Via Video Conference)

Mr. Sagar Saha.
...For the UOI.

Mr. K.K. Maity,
Ms. Aishyarya Rajyashree.
...For the Respondent Nos. 2 to 9.

The petitioner undertakes to affirm and stamp the petition/application as per Rules within 48 hours of resumption of normal functioning of the court. Subject to such undertaking the instant writ petition along with the connected application is taken up for consideration.

The petitioner is aggrieved by the provisional assessment order dated 16th June, 2020 wherein he has been directed to pay the differential duty @ 28%. According to the petitioner the said duty ought to have been 12%.

The petitioner in a similar circumstance approached before the Commissioner of Custom (Appeals) who was of the opinion that the goods imported are 'fruit juice based drink' and are classifiable under the tariff item 22029920 of the Customs Tariff Act, 1975. According to the petitioner, the Assistant Commissioner is acting contrary to the order passed by the Commissioner of Customs (Appeals), who is a superior authority.

The petitioner submits that since similar type of items are being imported on regular basis and the Assistant Commissioner ought to follow the decision arrived at by the Commissioner of Customs (Appeals) in its order dated 8th June, 2020 passed in Appeal F No. S5-232/CUS(PREV)/DINHATA/WB(CCP)/2020.

The learned advocate appearing for the respondents submits that the order impugned herein is the Provisional Assessment Order, which is an appealable one. Moreover, at the time of final assessment if the appellate authority is of the opinion that the Provisional Assessment Order was illegal then the petitioner is entitled to refund of the extra amount that had been paid by him.

As it appears that the order impugned is an appealable one, involves adjudication of factual matters and concerns revenue of the government, it would be appropriate to direct the petitioner to prefer appeal before the appellate authority in accordance with law.

In the event the petitioner prefers appeal within a week from date, the appellate authority shall endeavour to dispose of the same within ten days thereafter.

In the event the petitioner deposits the Bank Guarantee in terms of the order dated 17th June, 2020, the respondent authority shall release the goods of the petitioner, without prejudice to the rights and contentions of the parties in the appeal within three working days from the date of furnishing the Bank Guarantee.

The petitioner also raises a claim for damages on account of the illegal act on the part of the respondents. The prayer of the petitioner for damages shall be left open to be decided by the appropriate court, as and when the petitioner prefers application in connection with the same.

W.P. 5694 (W) of 2020 and CAN 3591 of 2020 are disposed of.

CAN 3589 of 2020 and CAN 3590 of 2020 filed in connection with WP 5693 (W) of 2020 has been wrongly tagged up with WP 5694 (W) of 2020. The Department is directed to de-tag WP 5693 (W) of 2020 from WP 5694 (W) of 2020 immediately.

Let WP 5693 (W) of 2020 along with CAN 3589 of 2020 and CAN 3590 of 2020 appear in the list on 6^{th} July, 2020 subject to the convenience of the court.

Urgent photostat certified copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Amrita Sinha, J.)