IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.12.2020

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THE HONOURABLE DR. JUSTICE ANITA SUMANTH
W.P. No.12046 of 2020
and
WMP. No.14776 of 2020

M/s.ITC Limited,
Represented by its Area Manager/General Manager,
100, Hotel Project,
Old No.37, New No.63, Mount Road,
Guindy Chennai - 600 032. ...Petitioner

Vs

1. The Principal Commissioner of Customs Air Cargo (Air Cargo),
   New Customs House, Chennai VIIth commisionerate,
   Air Cargo Complex, Meenambakkam,
   Chennai 600 027.

2. Commissioner of Customs (Appeals-I),
   60, Rajaji Salai, Custom House,
   Chennai - 600 001.

3. Additional Commssioner of Customs 1-4,
   New Customs House,
   Air Cargo Complex, Meenambakkam,
   Chennai 600 027.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Mandamus to direct the 3rd respondent to release the goods imported by the Petitioner under Bill of Entry No.7165627 dated 09.03.2020 on payment of the assessed Customs duty, and forbear the 3rd Respondent from enforcing Order-in-Appeal Air C.CUS.I. No.171/2020 dated 30.07.2020 passed by the 2nd respondent, pending disposal of the appeal filed by the Petitioner against the same before CESTAT, Chennai.

For Petitioner : Ms.L.Maithili
For Respondents : Mr.V.Sundareswaran,
Senior Panel Counsel

O R D E R

The petitioner seeks a mandamus directing the 3rd respondent/Additional Commissioner of Customs to release goods under bill of entry dated 09.03.2020 on payment of assessed customs duty and also forbearing him from enforcing first appellate order dated 30.07.2020 pending disposal of the appeal filed by the petitioner against the aforesaid order before the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), Chennai.

2. As far as the maintainability of this writ petition is concerned, the petitioner would state that the Division Bench of the CESTAT is not presently functioning and it is thus not in a position to approach the same seeking appropriate interim protection.

3. Since the matter is pending in appeal before the CESTAT, I make no reference to the merits of the matter. Suffice it to state that the petitioner has imported 2500 ml relaxing cartridge and air scenting car cartridge (aromatics) classifying the same under HSN code 96161010. According to the petitioner, the goods had been erroneously classified under CTH 33074900 by the vendor in the commercial invoice, falling under EXIM policy condition 'restricted'. The third respondent (R3) adjudicated the dispute in classification holding that since the same had been classified in the invoice under CTH 33074900, the import could be permitted only against authorization as per the amendment to Foreign Trade Policy and the restriction placed by Notification 15/2015-2020 dated 31.08.2019. He concluded that the goods were liable to be confiscated under Section 111(d) of the Customs Act, 1962 (in short 'Act'), extending an option to the petitioner to redeem the goods on payment of redemption fine of Rs.2,00,000/- and penalty of a sum of Rs.1,00,000/- in terms of Section 112(a) of the Act. In appeal, the Commissioner (Appeals), by order dated 28.07.2020 confirmed the order-in-original however reducing both the redemption fine and penalty to Rs.50,000/- under each head. The order of the first appellate authority is pending in appeal before the CESTAT.

4. It is not in dispute that the petitioner has remitted the entirety of the duty, seeing as the position is revenue neutral and both classifications (96161010 urged by the petitioner and CTH 33074900 urged by the Revenue) involve the same rate of duty. The only question that remains concerns the remittance of redemption fine and penalty.

5. On instructions, Mr.V.Sundareswaran, learned Senior Panel Counsel agrees that the goods may be permitted to be released upon the petitioner remitting the redemption fine and

penalty in full as directed by the appellate authority, I am of the view that it would suffice that the petitioner remit 100% of the redemption fine alone, as the duty has been remitted in full and 10% of the penalty stands remitted as part of the pre-deposit. The goods shall be released within a period of two (2) weeks from date of remittance of the redemption fine.

6. Coming to the second limb of the petitioner’s prayer, I am of the view that the drawal of samples and testing of the same would aid in the proper disposal of the second appeal pending before the CESTAT. Let samples be drawn prior to the release of the goods as directed by the Appellate Authority.

7. This Writ Petition is disposed in the aforesaid terms. No costs. Connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

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To
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AJS(CO)
SP(11/01/2021)