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

\+ W.P. (C) 5816/2020

AGILENT TECHNOLOGIES INDIA PRIVATE LIMITED
..... Petitioner

Through: Mr.V. Lakshmikumaran with Ms.Charanya Lakshmikumaran, Mr.Yogendra Aldak and Mr.Kunal Kapoor, Advocates.

versus

UNION OF INDIA & ORS. ...... Respondents

Through: Mr.Zoheb Hossain, Advocate for R-1. Ms.Sonu Bhatnagar with Mr.Vaibhav Joshi, Ms.Anushree Narain and Ms.Venus Mehrotra, Advocates for R-2, 3, 4 & 5.

% Date of Decision: 17th September, 2020

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MR. JUSTICE SANJEEV NARULA

J U D G M E N T

MANMOHAN, J: (Oral)

1. The petition has been heard by way of video conferencing.

2. On the last date of hearing, this Court had passed the following order:-

*"**C.M.No.21040/2020***

Exemption allowed, subject to all just exceptions.
Accordingly, the application stands disposed of.

W.P.(C) No.5816/2020

The petition has been listed before this Bench by the Registry in view of the urgency expressed therein. The same has been heard by way of video conferencing.

Present writ petition has been filed seeking a direction to the respondent no.2 to issue instructions to jurisdictional customs officers to expeditiously finalize provisional assessment in respect of all goods imported by the Petitioner at different customs locations i.e. Delhi, Bengaluru, Chennai and Hyderabad pending since May 2012.

Petitioner further prays for quashing of the Letter dated 17th January, 2020 issued by the Respondent No. 5, whereby a request was made to Respondent No. 3 to appoint a common adjudicating authority in accordance with paragraph 9.2 of the Circular No. 5/2016-Cus. dated 09.02.2016 to adjudicate the present matter and till then, keep the adjudication proceedings in abeyance.

Petitioner also seeks a direction to the respondents to expeditiously adjudicate SCN dated 10th July, 2018 in a time-bound manner.

Mr. V. Lakshmikumaran, learned counsel for the petitioner submits that since only one notice had been issued to the petitioner by Delhi Customs, procedure prescribed under paragraph 9.2 of the Circular dated 09.02.2016 is not applicable to the present case inasmuch as according to the said Circular, a common adjudicating authority is required to be appointed only in cases where multiple notices are issued from different customs locations.

He emphasizes that inaction on the part of respondents, without any reasonable explanation, is arbitrary, unjust, unfair and highly prejudicial to interests of the petitioner.

Issue notice.

Mr.Abhishek Khanna, Advocate accepts notice on behalf of respondent no.1/UOI and Mr.Amit Bansal, Advocate accepts notice on behalf of respondent nos.2 to 5.

Learned counsel for respondent nos.2 to 5 prays for and is permitted to obtain instructions within a week.

List on 17th September, 2020.

The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail."

3. Today Ms.Sonu Bhatnagar, learned counsel for respondent nos.2, 3, 4 & 5 states that her clients have received confirmation from D.C. SVB, New Delhi to the effect that no notice from other customs locations have been issued to the petitioner. Accordingly, she states that adjudication proceedings shall be commenced and completed forthwith after affording a reasonable opportunity of personal hearing to the petitioner. She has also screen shared with this Court the instructions dated 14th September, 2020 that she has received from the Deputy Commissioner of Customs (Legal), Special Valuation Branch, New Customs House, New Delhi. The said instructions are reproduced hereinbelow:-

"*1. It is submitted that a copy of IR has been forwarded to the Additional Director, Office of the Additional Director General, Risk Management Division, CBEC, Thackery Marg, New Marine Lines, Mumbai-400020 with a request to inform all other custom stations where the Bills of Entry filed by the importer have been assessed provisionally (Please refer to endorsement no. (ii) of the Investigation Report dated 18.05.2018). However, no Show Cause Notice is received from any of the port so far.*

2. Further, it appears from the writ petition filed by the petitioner that Assistant Commissioner of Customs (Group VB) has written a letter dated 17.01.2020 to the DC, Special Valuation Branch (SVB) wherein it was stated that during course of adjudication proceedings, the importer was specifically asked by the AC (Group VB) as to whether the importer are importing goods from other ports as well; that the importer vide their letter dated 09.01.2020 have informed that they *are importing goods into India at ACC Delhi, ACC Hyderabad and ACC Bengaluru.*

3. It is submitted after perusing the case file (total pages 623 and notings of page 41) which pertains to the year of 2012 that there is no reference made by the importer that they also import from the other ports. However, the above referred letter issued by the adjudicating authority, is not available in the case file. The last record available in the case file is SCN dated 10.07.2018 issued by the DC (Group VB).

4. Attention is also invited to para 6 of Board circular no. 05/2016-Customs dated 09.02.2016 wherein procedure of SVB investigation is clearly outlined. In the current case neither the importer has brought to the notice of SVB about the imports being made at other ports also nor the jurisdictional commissionerates (where such imports are being made), other than the Commissioner of Import, NCH, New Delhi have referred the matter to the SVB. It is mentioned that as per Para 3.4 of circular no. 05/2016-cus dated 09.02.2016 the jurisdictional Commissionerates decide whether the case of import between the related parties requires to be investigated by the SVB or the Jurisdictional Commissionerate can decide the matter themselves without referring to SVB. In this case, reference to SVB Delhi was made by the Commissioner of Customs (Import) NCH, New Delhi only and no reference was made by other commissionerates.

5. This branch has also updated the Central Registry database of the Directorate of Valuation and recorded the findings of the case which is visible for all the 5 SVB's in the country as well as the DG valuation (copy of the print out taken from the website of DG valuation is attached).

6. It is also pertinent that in the said IR, it was categorically mentioned that the IR is based solely on Importer's statement, information and declarations made in various written as well as oral submissions to this branch; that any change, error or omission may be brought to the notice of this branch immediately; that this IR does not take into account any suppression or mis-declaration affecting the invoice values which shall be dealt with appropriately under the law *and procedure as and when detected; that this decision shall be reviewed as and when information, additional or contrary to whatsoever furnished, is brought to the notice of this branch. Neither during the investigation nor subsequent to the issue of IR, any information was brought to the notice of this branch by the importer that they were importing from other commissionerates as well."*

4. Keeping in view the fact that since only one show cause notice has been issued to the petitioner by Delhi Customs, this Court is of the view that the procedure prescribed under paragraph 9.2 of the Circular dated 09th February, 2016 is not applicable to the present case. Consequently, the letter dated 17th January, 2020 issued by respondent no.5 is quashed and the respondent no.2 is directed to expeditiously adjudicate the Show Cause notice dated 10th July, 2018 preferably within a period of six months, in accordance with law.

5. With the aforesaid directions, the present writ petition stands disposed of.

6. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

MANMOHAN, J

SANJEEV NARULA, J

SEPTEMBER 17, 2020
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