IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.12.2021

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.323 of 2015
and
M.P.No.1 of 2015

(Through Video Conferencing)

M/s.Float Glass Centre,
a Proprietorship,
by its Manager,
447/130, Mint Street,
Chennai 600 079. ... Petitioner

vs.

1.Union of India,
By its Secretary,
Ministry of Finance,
128-A/North Block,
New Delhi.

2. The Assistant Commissioner (Imports), Group 3,
Chennai Customs,
Customs House,
60, Rajaji Salai,
Chennai-1. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of declaration, declaring that Final Notification No.48/2014 dated 11.12.2014 imposing anti-dumping duty issued by the 1st respondent under the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty) on Dumped Articles and for Determination of Injury) Rules, 1995 is applicable only to the goods shipped after the date of publication of the notification in the Gazette.

For Petitioner : Mr.T.V.Lakshmanan

For 2nd Respondent : Mr.Pramod Kumar Chopda
Senior Standing Counsel.

ORDER

The petitioner has filed this writ petition for a declaration to declare the petitioner is not liable to pay Anti-Dumping Duty on Dumped Articles imported by the petitioner under Bill of Entry Nos.7842486 & 7842661 both dated 29.12.2014.

2. The case of the petitioner is that prior to the issue of the impugned Notification No.48 /2014 dated 11.12.2014, the petitioner had contracted with the overseas supplier for the import of the goods from Saudi Arabia.

3. The learned counsel for the petitioner submits that the petitioner cannot be made liable to pay Anti-Dumping Duty on the imported Clear Float Glass imported under the aforesaid Bills of Entries in terms of the decision of the Hon'ble Supreme Court in Sneh Enterprises vs. Commissioner of Customs, New Delhi, 2006(7) SCC 714.

4. The learned counsel for the petitioner has also placed reliance on the decision of this Court to buttress the point that the import cannot be subject Anti dumping duty even though the petitioner had cleared Bill of Entry after the impugned Notification No.48/2014 dated 11.12.2014 was issued. It is submitted that as per the decision of the Hon'ble Supreme Court in Sneh Enterprises v. Commr. of Customs, (2006) 7 SCC 714, it is not part of the common law that the import of the goods would be deemed to have been completed only when import goods passes the customers barriers. It is submitted that unless a statutory interdict exist, common law principle would apply which would mean that import would be complete when the goods enter the territories of the country. It is submitted that importation of goods, in terms of the provisions of the Customs Act, was meant only for computation of duty thereunder and not for any other purpose. In other words, a situation contemplated under one statue cannot, in absence of any express or clear intendment, be made to apply or be given effect to while applying the provisions of another statute.

5. Opposing the prayer, the learned Senior Standing Counsel for the 2nd respondent submits that the writ petition is not maintainable inasmuch as the petitioner had already attempted to question the levy at the time when extension to Notification No.14/25/2016-DGAD dated 05.06.2014 was issued by the second respondent in W.P.No.15751 of 2014 and the said writ petition came to be dismissed by an order dated 12.12.2014.

6. The learned Senior Standing Counsel for the 2nd respondent further submits that the petitioner has not challenged the above said order of this Court rendered in W.P.No.15751 of 2014. It is therefore submitted that the writ petition is devoid on merits and the writ petition is liable to be dismissed.

7. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Senior Standing Counsel for the 2nd respondent.

8. Anti Dumping Duty was sought to be imposed on Clear Float Glass imported from Saudi Arabia, UAL & Pakistan. The petitioner approached this Court after filing the Bill of Entry when the 2nd respondent insisted that the petitioner should pay Anti Dumping Duty in terms of the above notification. The goods were allowed to be cleared after an interim order came to be passed by this Court on 09.01.2015. It is the case of the petitioner that the petitioner is not liable to pay Anti Dumping Duty in terms of Notification No.48/2014 -Customs (ADD) dated 11.12.2014 as the import had taken place much prior to issue of the impugned Notification as per the common law. Whether the imports had taken place before or after issuing of the impugned Notification is to be decided by a proper officer by issuing a notice to the petitioner under Section 28 of the Customs Act, 1962 after proper assessment in the Bill of Entries filed by the petitioner. It is for the petitioner to give a reply. Therefore, this Court is not inclined to decide the issue on merits as to whether the petitioner was indeed liable to pay Anti Dumping Duty on the Clear Float Glass imported by it under the respective Bills of Entries Nos.7842486 & 7842661 both dated 29.12.2014. The amount paid by the petitioner pursuant to an interim order dated 09.01.2015 has to be treated as amount paid "under protest" and deposit to secure the interest of the revenue .

9. Since the import pertains to the year 2014-15, the second respondent is directed to finalise the assessment in the respective Bill of Entries, if they have not yet been already finalised, in accordance with law.

10. In case, the respective Bill of Entries have been already finalised, liberty is given to the petitioner to file a statutory appeal and the respective Bill of Entries under Section 128 of the Customs Act, 1962 before the Appellate Commissioner, within a period of 30 days from the date of

receipt of a copy of this order. If such appeals filed within the aforesaid period, the Appellate Commissioner shall dispose the appeals on merits and in accordance with law, within a period of three months from the date of filing of such appeal. All the issues are left open to be canvassed on merits before the Commissioner. In case, the petitioner is held not liable to pay anti dumping duty, the amount shall be refunded to the petitioner, in accordance with law.

11. This writ petition stands disposed with the above observation. No costs. Consequently, connected miscellaneous petition is closed.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

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To

1.The Secretary,
Union of India,
Ministry of Finance,
128-A/North Block,
New Delhi.

2. The Assistant Commissioner (Imports), Group 3,
Chennai Customs,
Customs House,
60, Rajaji Salai,
Chennai-1.

+1cc to Mr.T.V.Lakshmanan, Advocate Sr.65487
+1cc to Mr.T.Pramod Kumar Chopda, Advocate Sr.65179

W.P.No.323 of 2015

ajs[co]
srg 28/01/2022