IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.NO.24815 OF 2021

[Video Conferencing]

M/s.Fortune Marketing Private Limited,
Represented by its Branch Head
Amit Gupta,
No.6,7, Ground Floor, ABC Trade Centre,
New No.39/ Old No.50,
Anna Salai, Chennai 600 002.

...Petitioner

-Vs.-

1.The Assistant Commissioner of Customs (Refunds-II),
Cutom House, 60 Rajaji Salai,
Chennai 600 001.

2.The Additional Commissioner of Customs
(Group 7H - Presently Group 5A)
Custom House, 60 Rajaji Salai,
Chennai 600 001.

3.The Assistant Commissioner of Customs (Group 5A)
Custom House, 60 Rajaji Salai,
Chennai 600 001.

...Respondents

Prayer :-

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the 2nd and 3rd Respondents to amend the bill of entry No.9172128 dated 04.04.2017 by extending the benefit of Notification No.6/2017-Cus dated 02.02.2017 and notification No.6/2017-Cx dated 02.02.2017 and further direct the 1st Respondent to sanction the refund consequent to such amendment and pass such further orders as this Court may deem fit.

For Petitioner	:	Mr.Hari Radhakrishnan
For Respondents	:	Mr.G.Meganathan Standing counsel

ORDER

After hearing the learned counsel for the petitioner and the learned Standing Counsel for the respondent, this Writ Petition is being disposed considering the fact that the issue could be resolved by directing the respondent to consider and pass appropriate orders on the application dated 28.04.2017 filed for amendment of the Bill of Entry dated 04.04.2017 filed by the petitioner in a bid to claim refund of the excess customs duty and additional duty of customs equivalent to Central Excise duty which was paid by the petitioner at the time of clearance of goods and assessment of Bill of Entry.

2.It is the case of the petitioner that exemptions to the imported goods viz., Finger Print Reader was announced by Notification No.6/2017-Customs, dated 02.02.2017 which amended the parent Notification No.12/2012-Customs, dated 17.03.2012. It is further submitted that there was corresponding amendment to the parent notification under the Central Excise Act under Notification No.12/2012-Central Excise, dated 17th March 2012 which stood amended by Notification No.6/2017-Central Excise, dated 02.02.2017.

3.It is the case of the petitioner that there was some technical glitch in as much as these notifications were not uploaded in system of the respondent as a result of which the petitioner ended up paying basic customs duty and additional duty of customs equivalent to Central Excise duty on the imported finger print reader by filing Bill of Entry No.9172128 on 04.04.2017 at higher rate of duty.

4.The learned counsel for the petitioner submits that the petitioner had earlier filed refund claim which came to be rejected and therefore, the petitioner filed W.P.No.15369 of 2019 which came to be disposed by an order dated 10.06.2019 by directing the respondents therein to pass a speaking order. It is submitted that during the interregnum, the Hon'ble Supreme Court clarified the position of law on 18.09.2019 in its Judgement made in M/s.ITC Limited v. CCE, Kolkata-IV and Others reported in 2019 (368) E.L.T. 216 (SC), wherein it has been clarified as follows:

> "47.When we consider the overall effect of the provisions prior to amendment and post-amendment under Finance Act, 2011, we are of the opinion that the claim for refund cannot be entertained unless the order of assessment or self-assessment is modified in accordance with law by taking recourse to the appropriate proceedings and it would not be within the

ken of Section 27 to set aside the order of self-assessment and reassess the duty for making refund; and in case any person is aggrieved by any order which would include self-assessment, he has to get the order modified under Section 128 or under other relevant provisions of the Act."

5.The learned counsel for the petitioner further submits that unless the assessment in the Bill of Entry dated 04.04.2017 is made in accordance with the provisions of the Customs Act, the refund claim cannot be scrutinized by the respondent.

6.On the other hand, the learned Standing counsel for the respondents submits that the petitioner is not entitled for refund as the Bill of Entry is dated 04.04.2017 and it has not been modified and therefore, in the light of the decision of M/s.ITC Limited v. CCE, Kolkata-IV and Others referred to supra, there is no merits in the writ petition.

7.There is no dispute that the petitioner has filed application for refund and also for amendment of the Bill of Entry within the time prescribed under Section 149 of the Customs Act, 1962. Since the application for amendment dated 28.04.2017 is pending before the second respondent, I am inclined to direct the second respondent to consider the application dated 28.04.2017 filed by the petitioner under Section 149 of the Customs Act, 1962 and pass appropriate orders on merits and in accordance with law, within a period of four weeks from the date of receipt of a copy of this order.

8.The Writ Petition is disposed of with the above observations. No costs.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

pgp

To

1.The Assistant Commissioner of Customs (Refunds-II),
Cutom House, 60 Rajaji Salai,
Chennai 600 001.

2.The Additional Commissioner of Customs
(Group 7H - Presently Group 5A)
Custom House, 60 Rajaji Salai,
Chennai 600 001.

3.The Assistant Commissioner of Customs (Group 5A)
Custom House, 60 Rajaji Salai,
Chennai 600 001.

W.P.No.24815 of 2021

GPL(CO)
RLP(28/01/2022)