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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2021

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.25292 of 2021

(Through Video Conferencing)

M/s.Sai Balaji Fancy Store,
Represented by its Proprietor,
Suresh Rajendran,
No.66, Perumal Mudali Street,
Parrys, Chennai - 600 001. ... Petitioner

Vs

1. The Deputy Commissioner of Customs (Gr.2),
   Chennai II Commissionerate,
   Customs House, No.60, Rajaji Salai,
   Chennai - 600 001.

2. The Deputy Commissioner of Customs (SIIB),
   Chennai III Commissionerate,
   No.60, Rajaji Salai, Customs House,
   Chennai - 600 001.

(cause title amended vide order of this Court
dated 10.12.2021 made in W.M.P.No.27108 of 2021
in W.P.No.25292 of 2021). ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the second respondent herein to forward the case file, concerning the Bill of Entry No.5903739 dated 19.10.2021, to the first respondent, so as to assess and release the goods by the first respondent, albeit provisionally, pending any further investigation by the Office of the second respondent and by also considering the representation of the petitioner dated 02.11.2021 and also to further consider the request of the petitioner for waiver of demurrage/storage/warehouse charges, concerning the Bill of Entry No.5903739 dated 19.10.2021.

For Petitioner : Mr.S.Baskaran

For R1 & R2 : Mr.M.Santhanaraman
Standing Counsel

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ORDER

The petitioner has filed this Writ Petition to direct the second respondent herein to forward the case file, concerning the Bill of Entry No.5903739 dated 19.10.2021 to the first respondent so as to assess and release the goods by the 1st respondent albeit provisionally, pending any further investigation by the office of the second respondent and by also considering the representation of the petitioner dated 02.11.2021 and also to further consider the request of the petitioner for waiver of demurrage/storage/warehouse charges, concerning the Bill of Entry No.5903739 dated 19.10.2021.

2. It is the specific case of the petitioner that the petitioner is a regular importer of parts of plastic toys, soap water solution, whistle for school supplies under CTH 3923 29 90 and 3402 19 00. That apart, the petitioner has also imported whistle for school supplies calling under CTH 39261019 of The Customs Tariff Act, 1975.

3. It is submitted that the imports were made as early as on 19.10.2021 and have not been allowed to be cleared. It is further submitted that the Intelligence and Investigation Branch of the Customs Department represented by the second respondent appointed a Chartered Engineer as early as on 24.11.2021 who by a report dated 02.12.2021 has confirmed with the imported goods are parts of plastic toys, soap water solution, whistle for school supplies covered by the aforesaid Bill of Entry do not contain any e-waste and that on a visual inspection of the sample shows parts of plastic bubble toy.

4. The learned counsel for the petitioner therefore submits that petitioner is entitled for assessment on imported as declared in the Bill of Entry.

5. The learned counsel for the petitioner further submits that same goods were also allowed to be cleared by the respondent herein on an earlier occasion when Bill of Entry No.3125610 dated 12.03.2021 and Bill of Entry No.5293511 dated 03.09.2021 was assessed.

6. Opposing the prayer, learned Standing Counsel for the respondents submits that the petitioner has resorted to mis-declaration of the classification in as much as the imported plastic bottle sticks and Accessories of soap water solution are a full plastic toy and that the import should accompany a certification from the BIS (Bureau of Indian Standards-quality control order), 2020.

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7. It is further submitted that the petitioner has evaded tax by making wrong declaration apart from subjecting the children to risk as the imported goods do not accompany the Bureau of Indian Standards certification.

8. The, learned counsel for the respondents further submits that the imported goods are not toys only to be used by the children below the age of 14 or by the adults and therefore, the petitioner is entitled for clearance.

9. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Standing Counsel for the respondents.

10. The Bill of Entry is pending assessment since 19.10.2021. Whether the imported goods are parts of plastic bubble toy or plastic toy, is to be determined by the Assessing Officer. In fact, the nature of product which has been described in the Bill of Entry does not require a certificate of the Chartered Engineer.

11. However, a sample was referred by the second respondent to a Chartered Engineer who has given a report on 02.12.2021. Thus, adequate materials are available before the first respondent (Assessing Officer) to decide the correct classifications and whether the imported goods are restricted/prohibited.

12. Considering the fact that, the impugned Bill of Entry has not assessed for a very long period, the respondents are directed to assess the goods within a period of 15 days from the date of receipt of copy of this order. Whether there was evasion of Customs Duty on the previous imports made by the petitioner is left open to be decided in accordance with law.

13. This writ petition stands disposed of with the above observations. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

jas/nst

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To

1. The Deputy Commissioner of Customs (Gr.2),
   Chennai II Commissionerate,
   Customs House, No.60, Rajaji Salai,
   Chennai - 600 001.

2. The Deputy Commissioner of Customs (SIIB),
   Chennai III Commissionerate,
   No.60, Rajaji Salai, Customs House,
   Chennai - 600 001.

+1cc to Mr.M.Santhanaraman, Advocate, S.R.No.68208

+1cc to Mr.S.Baskaran, Advocate, S.R.No.68225

W.P.No.25292 of 2021

KV(CO)
SU(20/01/2022)

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