IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.02.2022

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.1486 of 2022
and
W.M.P.No.1633 of 2022
(Through Video Conferencing)

M/s.Bay-Trans Impex Private Limited,
Represented by its Director,
Shri.Abdul Kabeer Mohaoudheen,
Machingal Building,
XVII/14 A,B,
Pukkattupadi Road,
Vadakode Post,
Mundampalam, Cochin - 680 021. ...Petitioner

Vs.

The Commissioner of Customs,
Chennai II Commissionerate,
No.60, Rajaji Salai,
Custom House, Chennai - 600 001. ...Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Mandamus directing the respondent to finalize the provisional assessment in the Bills of Entry bearing Nos.782906 dated 17.02.2011, 796257 dated 03.03.2011, 2987009 dated 17.03.2011, 3033166 dated 24.03.2011, 3258184 dated 20.04.2011 and 3580363 dated 23.05.2011.

For Petitioner : Mr.G.Derrick Sam

For Respondent : Mrs.R.Hemalatha
Senior Standing Counsel

ORDER

Mrs.R.Hemalatha, learned Senior Standing Counsel takes notice on behalf of the respondent.

2.The petitioner was subjected to anti-dumping duty in terms of Notification No.79/2010-Customs dated 30.07.2010. This notification was issued for levying/imposing provisional anti-dumping duty. Thereafter, for a period of six months there was no levy at all. Thereafter, the final findings was given by the designated authority, pursuant to which, Notification No.82/2011-Customs dated 25.08.2011 was issued by the Central Government levying anti-dumping duty.

3.It is the specific case of the petitioner that the Bills of Entry were assessed provisionally in view of the provisional levy under Notification No.79/2010-Customs dated 30.07.2010. It is further case of the petitioner that the imports were made by the petitioner during the period between 30.07.2010 and 25.08.2011.

4.The learned counsel for the petitioner submits that decision of the Hon'ble Supreme Court in Commissioner of Customs, Bangalore Vs G.M.Exports, 2015 (324) E.L.T. 209 (S.C.), set aside the decision of the High Court and held that the expression "levied" has to be understood as "levied" under Rule 13 of the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 and once this is so, it becomes clear that such levy cannot be exceeded for a period of six months or for a maximum period of nine months, as the case may be.

5.It is noticed that the petitioner has been sending representations from 2012, which has not been evoked any response from the respondent. Considering the fact that the issue appears to be answered by the Hon'ble Supreme Court, I am inclined to dispose this writ petition without expressing any opinion on merits of the case, by directing the respondent to pass appropriate orders on the representations of the petitioner, to finalize the assessment in the subjected Bills of Entry mentioned in the representations of the petitioner.

6.The respondent shall also consider the aforesaid decision of the Hon'ble Supreme Court in G.M.Exports case (referred to supra). This exercise shall be carried out by the respondent within a period of three months from the date of receipt of a copy of this order.

7.Needless to state, the petitioner shall be heard before such orders are passed by the respondent subject to protocols in place due Covid-19 pandemic.

8.This Writ Petition stands disposed of with the above observations. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

arb

To

The Commissioner of Customs,
Chennai II Commissionerate,
No.60, Rajaji Salai,
Custom House, Chennai - 600 001.

+1cc to M/s.R.Hemalatha, Advocate, S.R.No.7926

W.P.No.1486 of 2022
and
W.M.P.No.1633 of 2022

SR(CO)
RGA(22/02/2022)