IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.07.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI, CHIEF JUSTICE
AND
THE HON'BLE MRS.JUSTICE N.MALA

W.P.Nos.15893, 15895 and 15912 of 2022

Control Techniques India P Ltd
Represented by Deputy General Manager-Operations
V.S.Shankarraman
having registered office at
117-B Development Plot
Industrial Estate, Perungudi
Chennai – 600 096.
Tamil Nadu. .. Petitioner

Vs

1 The Union of India
Through its Secretary
Department of Revenue
Ministry of Finance, Government of India
North Block, New Delhi - 110 001.

2 Central Board of Indirect Taxes and Customs
Through Chairman
Department of Revenue
Ministry of Finance, North Block
New Delhi - 110 001.

3 The Additional Director General
Directorate of Revenue Intelligence
Lucknow Zonal Unit, 2/31, Vishal Khand
Gomti Nagar, Lucknow, U.P. - 226 010.

4 The Principal Commissioner/Commissioner of Customs
New Custom House, Air Cargo Complex
Meenambakkam, Chennai - 600 027.

5 The Deputy/Assistant Commissioner of Customs
Chennai Sea Custom House
60, Rajaji Salai, Chennai - 600 001.

6 The Deputy / Assistant Commissioner of Customs
Bangaiore Air Cargo Airport and Air Cargo Complex
Air India, Sats Air Freight Terminal
Devananhalli, Bengaluru - 560 300. .. Respondents

Prayer in W.P.No.15893 of 2022: Petition filed under Article 226 of the Constitution of India praying for a writ of declaration to read down and declare as invalid and unconstitutional Section 97 of the Finance Act 2022 in so far as the provision when read with Section 2(34), Section 5 and Section 28(4) of the Customs Act seeks to retroactively validate the power of Respondent No.3 as a proper officer to issue the impugned show cause notice dated 28.09.2020 and in so far as the provision gives retroactive effect to amendments introduced in Sections 2, 3 and 5 of the Customs Act and thereby bring under its purview actions and proceedings arising out of or taken under the above provisions and pending on the date of commencement of the Finance Act, 2022.

Prayer in W.P.No.15895 of 2022: Petition filed under Article 226 of the Constitution of India praying for a writ of declaration to read down and declare the Impugned Notification No.40/2012 dated 2.5.2012 superseded by Notification No. 26/2022 dated 31.03.2022 to be invalid and unconstitutional when read with Notification No.17/2002-Customs (NT) dated 7.3.2002 superseded by Notification No. 25/2022 dated 31.03.2022 in so far as Respondent No.3 is conferred with jurisdiction to issue the Impugned Show Cause Notice dated 28.09.2020 issued in exercise of powers under Section 2(34) read with Section 5 of the Customs Act 1962 and Section 97 of the Finance Act 2022

Prayer in W.P.No.15912 of 2022: Petition filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus to quash the impugned Show Cause Notice F.No. DRI/ NRU/ CI- 26/ Int-01/ Enq- 91/ 2018 issued by Respondent No.3 dated 28.09.2020 , the entire proceedings arising therefrom and consequently direct refund of the differential duty of Rs. 1,74,56,288/- which was deposited by the petitioner under instructions of Respondent No.3.

For the Petitioner in all the writ petitions	:	Mr.Abhishek Rastogi and Ms.Kanika Sharma
For the Respondents in all the writ petitions	:	Mr.K.Umesh Rao Senior Standing Counsel for respondents 1, 2, 4, 5 and 6
	:	Mr.V.Sundareswaran Senior Standing Counsel for 3rd respondent

COMMON ORDER

(Order of the Court was made by the Hon'ble Chief Justice)

The petitioner has preferred three writ petitions. In one writ petition, the challenge is to the show cause notice dated

28.09.2020. In the second writ petition, the prayer is to declare the notification dated 2.5.2012, superseded by the notification dated 31.3.2022, to be invalid and unconstitutional when read with Notification No.17/2002-Customs (NT) dated 7.3.2022 superseded by Notification No.25/2022 dated 31.3.2022. The third writ petition has been filed to challenge the constitutional validity of Section 97 of the Finance Act, 2022 along with the amendment in the Customs Act, 1962.

2. Learned counsel for the petitioner made arguments at length in reference to the challenge to the constitutional validity of Section 97 of the Finance Act, 2022 [for brevity, "the *Act of 2022*"] and the amendment in the Customs Act, 1962 [for brevity, "*the Act of 1962*"] to press the challenge to the notification dated 2.5.2012 contending that the said notification having been superseded by a notification dated 31.3.2022, it cannot be applied and is otherwise not maintainable in the eye of law. However, realising that the show cause notice was given in the year 2020 and also the matter is pending consideration before the competent authority, learned

counsel for the petitioner, on instructions, submitted that she is not required to press any of the writ petitions, if a direction is given to the respondents to conclude the proceedings within a reasonable period, because after issuance of the show cause notice dated 28.09.2020, a considerable period has already passed, but the proceedings have not been concluded.

3. In view of the submissions made by learned counsel for petitioner, learned counsel appearing for the Union of India was asked to seek instructions and, accordingly, the matter was ordered to be passed over. Post-lunch when the matters are taken upon, learned counsel for the Union of India, on instructions, submitted that the department could not find out before which authority the matter is pending after the issuance of show cause notice and instructions could not be passed on. But a prayer has been made to give reasonable time to complete the proceedings pursuant to the show cause notice.

4. In view of the above, we have considered the submissions of the parties and find that one and half years have already passed from the date of show cause notice. Hence, this Court is of the opinion that while allowing the writ petitions to be withdrawn by the petitioner, a direction to complete the proceedings pursuant to the show cause notice may be given.

Accordingly, the writ petitions are disposed of with a direction to the respondents to complete the proceedings pursuant to the show cause notice dated 28.09.2020 within a period of four months from the date of receipt of a copy of this order. The petitioner is directed to cooperate with the competent authority for completion of the proceedings within the time stipulated. There will be no order as to costs. Consequently, W.M.P.No.15214 of 2022 is closed.

(M.N.B., CJ.) (N.M., J.)
08.07.2022

Index : Yes/No
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To:

1 The Secretary
Union of India, Department of Revenue
Ministry of Finance, Government of India
North Block, New Delhi - 110 001.

2 The Chairman
Central Board of Indirect Taxes and Customs
Department of Revenue
Ministry of Finance, North Block
New Delhi - 110 001.

3 The Additional Director General
Directorate of Revenue Intelligence
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THE HON'BLE CHIEF JUSTICE
AND
N.MALA,J.

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