IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.18348 of 2021
and
W.M.P.No.19554 of 2021

[Video Conferencing]

M/s.The West India Power Equipments (P) Ltd.,
Represented by its Manager
Shri Shiju. T.V.
Plot No.9, Phase-II, Marimalai Nagar
Industrial Estate, Chithamanur Village
Kancheepuram District – 603 209.

....Petitioner

-Vs.-

The Assistant Commissioner of Customs (Group 2H)
Custom House
No.60, Rajaji Salai
Chennai – 600 001.

.....Respondent

Prayer :-

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling the entire records pertaining to the reassessment made in the Bill of Entry No.3435602 dated 05.04.2021 by the respondent and quash the same as illegal and violative of the provisions of Section 17 of the Customs Act, 1962.

For Petitioner :Mr.Hari Radhakrishnan
For Respondent :Mr.A.P.Srinivas,
Senior Standing Counsel.

ORDER

The petitioner had imported consignment of Wiper Blade Rubber and filed a Bill of Entry dated 03.04.2021 classifying the same under the heading 4016 99 90 and had availed the benefit of Serial No.534 in Notification No.46 of 2011 dated 01.06.2011. After the self assessment Bill of Entry was uploaded by the petitioner, the respondent had reassessed the Bill of Entry under the heading 8512 90 00.

2.It is the case of the petitioner that once an assessment is made contrary to the declaration made by Importer, the respondent must pass a speaking order in terms of Section 17(5) of the Customs Act, 1962. However, as the respondent has not passed any order, the petitioner is constrained to file this Writ Petition.

3.The learned Senior Standing Counsel for the respondent submits that subsequent to the assessment of the Bill of Entry, the petitioner has uploaded it representation reaffirming the classification of the imported goods under the heading 4016 99 90. It is further submitted that the petitioner thereafter registered a protest letter on 27.08.2021, after the assessment was completed. It is submitted that the reason for delay in passing the speaking order in this case was due to the submission of representation of the petitioner subsequent to the assessment of the subject Bill of Entry and lack of further follow up by the petitioner.

4.The learned Senior Standing Counsel for the respondent further submitted that a notice of personal hearing has been issued to the petitioner with a view to adhere to the principles of natural justice and therefore, it is submitted that the petitioner should participate in the aforesaid proceedings.

5.By way of rejoinder, the learned counsel for the petitioner submits that the petitioner is in this business for a period of over 20 years and all along the petitioner has been classifying Wiper Blade Rubber under the heading 4016 99 90 and that the respondents have fastened the rival classification 8512 90 00. Sections 17 and 18 of the Customs Act, 1962 reads as under:

> 17. Assessment of duty. –(1) An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, selfassess the duty, if any, leviable on such goods.
>
> (2) The proper officer may verify the self-assessment of such goods and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary.

(3) For verification of self-assessment under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any contract, broker's note, insurance policy, catalogue or other document, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained, and to furnish any information required for such ascertainment which is in his power to produce or furnish, and thereupon, the importer, exporter or such other person shall produce such document or furnish such information.

(4) Where it is found on verification, examination or testing of the goods or otherwise that the self-assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.

(5) Where any re-assessment done under sub-section (4) is contrary to the self-assessment 25 done by the importer or exporter regarding valuation of goods, classification, exemption or concessions of duty availed consequent to any notification issued therefor under this Act and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re- assessment in writing, the proper officer shall pass a speaking order on the re-assessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.

(6) Where re-assessment has not been done or a speaking order has not been passed on re- assessment, the proper officer may audit the assessment of duty of the imported goods or export goods at his office or at the premises of the importer or exporter, as may be expedient, in such manner as may be prescribed.

18. Provisional assessment of duty- (1) Notwithstanding anything contained in this Act but without prejudice to the provisions of section 46,—

(a) where the importer or exporter is unable to make self-assessment under sub-section (1) of section 17 and makes a request in writing to the proper officer for assessment; or

(b) where the proper officer deems it necessary to subject any imported goods or export goods to any chemical or other test; or

(c) where the importer or exporter has produced all the necessary documents and furnished full information but the proper officer deems it necessary to make further enquiry; or

(d) where necessary documents have not been produced or information has not been furnished and the proper officer deems it necessary to make further enquiry,

the proper officer may direct that the duty leviable on such goods be assessed provisionally if the importer or the exporter, as the case may be, furnishes such security as the proper officer deems fit for the payment of the deficiency, if any, between the duty as may be finally assessed and the duty provisionally assessed.";

(2) When the duty leviable on such goods is assessed finally or reassessed by the proper officer in accordance with the provisions of this Act, then -

(a) in the case of goods cleared for home consumption or exportation, the amount paid shall be adjusted against the duty finally assessed and if the amount so paid falls short of, or is in excess of the duty finally assessed, the importer or the exporter of the goods shall pay the deficiency or be entitled to a refund, as the case may be;

(b) in the case of warehoused goods, the proper officer may, where the duty finally assessed or re-assessed, as the case may be, is in excess of the duty provisionally assessed, require the importer to execute a bond, binding himself in a sum equal to twice the amount of the excess duty.

(3) The importer or exporter shall be liable to pay interest, on any amount payable to the Central Government, consequent to the final assessment order or re-assessment order under sub-section (2), at the rate fixed by the Central Government under section 28AB from the first day of the month in which the duty is provisionally assessed till the date of payment thereof.

(4) Subject the sub-section (5), if any refundable amount referred to in clause (a) of sub-section (2) is not refunded under that sub-section within three months from the date of assessment of duty finally or reassessment of duty, as the case may be, there shall be paid an interest on such un-refunded amount at such rate fixed by the Central Government under section 27A till the date of refund of such amount.

(5) The amount of duty refundable under sub-section (2) and the interest under sub-section (4), if any, shall, instead of being credited to the Fund, be paid to the importer or the exporter, as the case may be, if such amount is relatable to.

(a) the duty and interest, if any, paid on such duty paid by the importer, or the exporter, as the case may be, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;

(b) the duty and interest, if any, paid on such duty on imports made by an individual for his personal use;

(c) the duty and interest, if any, paid on such duty borne by the buyer, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;

(d) the export duty as specified in section 26;

(e) drawback of duty payable under sections 74 and 75.

6.Admittedly, in this case, after the assessment was finalised, the petitioner has filed an application for registering its protest on 27.08.2021. Though Section 17(5) of the Act contemplates passing of a speaking order within a period of 15 days of reassessment of Bill of Entry or shipping Bill, the issue as to whether the petitioner had to file a declaration under 4016 99 90 or under 8512 90 00 is a matter to be decided by the authority based on the facts that are available before the respondent and the petitioner.

7.Since notice has already been issued to the petitioner, I am inclined to dispose of the Writ Petition by directing the petitioner to participate in the aforesaid proceedings. Though in the counter, the respondent has stated that a notice of personal hearing has been issued to the petitioner, the date of personal hearing has not been disclosed.

8.Considering the aforesaid position, I direct the respondent to pass a speaking order on merits and in accordance with law, within a period of 30 days from the date of receipt of a copy of this order. It is also made clear that all the issues are left open for the petitioner to canvass before the respondent. Needless to say, before any order is passed by the respondent, the petitioner shall also be heard in person or through their authorised representative, subject to such

Government protocols as may be in place, owing to outbreak of third wave of Pandemic.

9.The Writ Petition stands disposed of with the above observations. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

pgp

To

The Assistant Commissioner of Customs (Group 2H)
Custom House
No.60, Rajaji Salai
Chennai - 600 001.

+1 CC to Mr.A.P.Srinivas, Advocate sr 2685

W.P.No.18348 of 2021

KSM(CO)
SP(16/02/2022)