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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of decision: 12.04.2022

+ **W.P.(C) 5980/2022**

DELHI METRO RAIL CORPORATION LTD ..... Petitioner
Through: Mr Vibha Mahajan Seth, Adv.

versus

DEPUTY COMMISSIONER OF CUSTOMS & ORS. ..... Respondents
Through: Mr Anurag Ojha, Sr. Standing Counsel with Mr Gautam Baniwal, Adv.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER
HON'BLE MS. JUSTICE POONAM A. BAMBA
[Physical court hearing/ hybrid hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):-

CM APPL. 17969/2022

1. Allowed, subject to the petitioner filing typed copies of dim documents within four weeks.

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2. Issue notice.

2.1. Mr. Anurag Ojha accepts notice on behalf of the respondents.

3. With the consent of the counsel for the parties, the writ petition is taken up for hearing and final disposal, at this stage itself.

4. The substantive prayer made in the writ petition reads as follows:

> *"(i) Issue a Writ of Mandamus or any other Writ or direction of appropriate nature directing the Respondents to carry out the necessary amendment in the Bills of Entries generated in the months of June & July, 2018 at a combined assessable value of Rs.2,53,20,818/- for Imported Goods falling under Tariff Item No. CTH 85176290 ("other machines for reception, conversion*

and transmission or regeneration of voice, image or data.") and thereby reflecting these Goods to be cleared on payment of the Basic Customs Duty (BCD) @ 10% instead of 20%.

(ii) Direct the Respondents to refund of the excess Basic Customs Duty to the Petitioner along with reasonable interest;"

5. The principal grievance articulated in the writ petition is that, although the petitioner has paid excess Basic Customs Duty [in short, 'BCD'] against the bills of entry pertaining to the June & July 2018, the amendments to the said bills of entry have not been carried out by the respondents.

5.1. It is the petitioner's case that because the necessary amendments have not been carried out by the respondents, the next steps in the matter, that is, refunding the excess BCD along with interest has not occurred.

6. The reason set forth by the petitioner concerning the payment of excess BCD is founded on an exemption notification dated 02.02.2018, issued by the Government of India, Ministry of Finance (Department of Revenue).

6.1. According to the petitioner, it had to pay BCD at the rate of 10%, whereas, it ended up paying the said duty, albeit inadvertently, at the rate of 20%.

7. Mr Anurag Ojha, who appears on behalf of the respondents, says that the amendment sought by the petitioner in the bills of entry, can only be carried out in terms of Section 149 of the Customs Act, 1962. In this regard, he has drawn our attention to the first proviso appended to the said provision.

8. Ms. Vibha Mahajan Seth, who appears on behalf of the petitioner, on the other hand, says, as noticed above, the document which would show that

the petitioner has paid excess BCD is the exemption notification dated 02.02.2018.

9. In these circumstances, the respondents are directed to treat the present writ petition, as a representation and deal with the same.

9.1. The respondents will grant personal hearing to the authorized representative of the petitioner, and, thereafter, pass a speaking order with regard to the relief sought by the petitioner before us, which would include the two facets adverted to hereinabove.

9.2. Needless to add, the aforementioned exercise will be carried by the respondents at the earliest, though not later than eight weeks from the date of receipt of a copy of this order.

9.3. Parties will act, based on the digitally signed copy of this order.

10 The writ petition is disposed of in the aforesaid terms.

RAJIV SHAKDHER, J

POONAM A. BAMBA, J

APRIL 12, 2022/p

Click here to check corrigendum, if any