IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2023

CORAM :

The HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.No.1447 of 2023
and W.M.P.Nos.1535 & 1536 of 2023

M/s.Astadik Overseas
Partnership Firm
Being represented by its Partner
Mr.Prashanth Raj.N
having office at No.1376, Kathrigupee Main Road,
Near Hanumanth Nagar Police Station,
Ashok Nagar, BSK First Stage,
Bangalore South, Bengaluru,
Banashankari,
Karnataka – 560 050. .. Petitioner

vs

The Assistant Commissioner
DC / AC-IX-Office / Off-Commercial – Customs
Audit, Chennai
Office at Custom House,
No.60, Rajaji Salai,
Chennai – 600 001. .. Respondent

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari to call for records pertaining to Audit Consultative Letter from Respondent dated 26.12.2022 bearing (F.No. CHE/1192/RA-479/2022/AUDIT) on the file of the respondent and quash the same.

For Petitioner	:	Mr.S.P.Siva Pradosh
For Respondent	:	Mr. R.Gunaalan Junior Standing Counsel

ORDER

1. The petitioner has challenged the Audit Consultative Letter dated 26.12.2022 issued to him as per the provisions of Section 28 of the Customs Act, 1962 requesting them to pay differential duty of Rs.2,08,24,864/- with interest on the ground that they had imported goods namely Horse Feed which according to the respondent is not exempted from payment of IGST Duty.

2. The impugned Audit Consultative Letter is only a pre-notice consultation initiated by the respondent prior to issuance of notice as required under Section 28 of the Customs Act, 1962 which deals with recovery of dues not levied or not paid or short-levied or short paid or erroneously refunded. As per the first proviso to Section 28 (1) of the Customs Act, 1962 before issuing notice under Section 28, appropriate officer shall show pre-notice consultation with the person chargeable with duty or interest in such manner as may be prescribed. The respondent claims that the petitioner has wrongly availed exemption from IGST Duty while they had imported Horse Feed in the year 2021.

3. However, the petitioner strongly denies the said contention. According to them, as per the definition of 'cattle' as

founded in the Indian Forest Act, 1927, Tamil Nadu Forest Act, 1882, Cattle Tress Pass Act, 1871 and the Wild Life Protection Act, 1972, the Horse Feed will also come within the definition of cattle which is exempted from payment of IGST duty. The petitioner also contends that as per the notification issued by the Government of India, Ministry of Finance (Department of Revenue) dated 28.06.2017 in Notification No. 2/2017 – Integrated Tax (Rate), as found in Sl.No.102, horse feed is also exempted from IGST Duty.

4. Being an Audit Consultative Letter which is a mere pre-notice consultation, as required under the first proviso to Section 28(1) of the Customs Act, 1962, the question of interfering with the said letter by this Court, at this stage, will not arise. No notice subsequent to the pre-notice consultation as required under Section 28 of the Customs Act has been issued to the knowledge of this Court.

5. The Audit Consultative Letter dated 26.12.2022 which is challenged in this writ petition is only a pre-notice consultation made by the respondent. As no final decision has been taken till date by the respondent as to whether a notice contemplated under Section 28(1) of the Customs Act, 1962 has to be issued to the petitioner or not with regard to the recovery of duties not levied or

not paid or short levied or short paid or erroneously refunded, the question of entertaining this writ petition, at this stage, will not arise as the petitioner has approached this Court pre-maturely. However, the respondent will have to necessarily give due consideration on merits and in accordance with law to the contentions raised by the petitioner in this writ petition that the horse feed is exempted from payment of IGST Duty.

6. For the foregoing reasons, this writ petition is disposed of on the ground that the writ petition has been filed pre-maturely. However, a direction is issued to the respondent to consider all the contentions raised by the petitioner in this writ petition on merits and in accordance with law and only thereafter decide as to whether a notice will have to be issued to the petitioner as per the provisions of Section 28(1) of the Customs Act, 1962 or not. No costs. Connected miscellaneous petitions are closed.

23.01.2023

Index:Yes/No
Neutral Citation:Yes/No
ssm

To

The Assistant Commissioner
DC / AC-IX-Office / Off-Commercial – Customs
Audit, Chennai
Office at Custom House,
No.60, Rajaji Salai,
Chennai – 600 001.

ABDUL QUDDHOSE,J.

ssm

W.P.No.1447 of 2023

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