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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2023

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.Nos.8112 & 8113 of 2020
and W.M.P.No.9632 of 2020

M/s.Stanley Engineered Fastening India Pvt Ltd.,
Rep. By its Company Secretary
Mr.K.Senthilkumar
OZ-14 SIPCOT Hi-Tech Special Economic Zone,
Oragadam, Kancheepuram Dt – 602 0105. .. Petitioner in all writ petitions

vs

1.Authorised Officer
SIPCOT Hi-tech Special Economic Zone,
Sriperumbudur Taluk,
Oragadam, Kancheepuram Dt. 602 105.

2.Commissioner of Customs (Chennai Import)
Customs House, No.60, Rajaji Salai,
Chennai – 600 001. .. Respondents in all writ petitions

Prayer in W.P.No.8112 of 2020: Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus and call for the records pertaining to the impugned communication dated 29.11.2019 and 14.02.2020 issued in F.No.SEZ Oragadam/Stanley/1/2019 by the 1st respondent and quash the same and further direct the 1st respondent to re-assess the bills of entry mentioned in the petitioner's application dated 10.10.2019 and 22.01.2020 after extending the benefit of notification No.57/2018-Cus dated 7.8.2018, which amended the general exemption notification No.50/2017-Cus dated 30.06.2017.

Prayer in W.P.No.8113 of 2020: Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari

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mandamus and call for the records pertaining to the impugned Public Notice NO.88/2019 dated 18.10.2019 issued in F.No.S.Misc 02/2018-19-AM-CH-II issued by the 2nd respondent and quash the same.

For Petitioner	:	Mr.Hari Radhakrishnan (in all writ petitions)
For Respondents	:	R1 – No appearance Mr.V.Sundareswaran for R2 (in all writ petitions)

COMMON ORDER

A common order is passed in this two writ petitions seeing as the facts giving rise to the writ petitions and legal issues are inextricable woven together and must be addressed simultaneously.

2. The petitioner is engaged in the business of fastening and assembling technologies. It is an importer and had cleared consignments of different categories of screws, classifiable under CTH 7318 1500 vide 146 Bill of Entry, from SIPCOT Hi-Tech, Special Economic Zone, Oragadam.

3. At the time of clearance for home consumption i.e., from the SEZ, to the domestic tariff area, Basic Customs Duty (BCD) had been remitted at the rate of 25% without noticing that the petitioner is eligible for a concessional rate of tax at of 15% vide

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Notification No.57 of 2018 – Cus dated 07.08.2018. The aforesaid Notification had amended general Exemption Notification No.50/2017 – Cus 30.06.2017.

4. A request for assessment and refund had been filed on 10.10.2009 seeking re-assessment of the Bills of Entry in terms of Section 149 read with Section 154 of the Customs Act, 1962. The impugned order, however, came to be passed by the respondent on 14.02.2020 rejecting the request for re-assessment and refund on the ground that the petitioner had not filed statutory appeal with the appropriate authority seeking modification of the self-assessment.

5. Inter-alia the first respondent refers to a Public Notice issued by the Commissioner of Customs / R2 in Public Notice No.88 of 2009 dated 18.10.2019. In this public notice, the authority refers to a judgment of the Hon'ble Supreme Court in the case of *ITC Limited vs Commercial of Central Excise, Kolkata – IV* [368 ELT 216]. In that judgment, the Hon'ble Supreme Court was concerned with the question as to whether in the absence of any challenge to an order of assessment by way of appeal, a refund application against the assessed duty could be entertained.

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6. The question was answered adverse to the assessees stating that the applications for refund were not maintainable unless an order of self-assessment quantifying the duty had been the subject-matter of statutory remedy. Inter-alia, the Hon'ble Supreme Court states that such challenge may be by way of appeal under Section 128 or other relevant provisions of the Act. Paragraph 47 of the judgment is relevant in this context and is extracted below:-

> *"47. When we consider the overall effect of the provisions prior to amendment and post-amendment under Finance Act, 2011, we are of the opinion that the claim for refund cannot be entertained unless the order of assessment or self-assessment is modified in accordance with law by taking recourse to the appropriate proceedings and it would not be within the ken of Section 27 to set aside the order of self-assessment and reassess the duty for making refund; and in case any person is aggrieved by any order which would include self-assessment, he has to get the order modified under Section 128 or under other relevant provisions of the Act."*

7. To this extent, Public Notice No.88 of 2019 which states that '*no reassessment shall be allowed unless the order of assessment including self assessment is duly modified by way of appeal*' is incorrect as it places a restriction on the mode of re-assessment. No restrictions was envisaged by the Hon'ble Supreme Court that has made it clear that the modification could be by way of statutory appeal or under relevant provisions of the Act. To this

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extent, the stipulation in public notice dated 15.10.2019, does not align with the ratio of the judgment of the Supreme Court.

8. In light of the categoric pronouncement of Hon'ble Supreme Court as aforesaid, resort to Section 149 of the Customs Act is perfectly in order and thus the application of the petitioner is restored to the file of the first respondent for consideration in line with the conclusion in the case of ITC and observations made herein.

9. I have in the case of *M/s.Hewlett Packard Enterprise v Joint Commissioner of Customs* [W.P.No.6764 of 2020 dated 15.10.2020] considered a similar case and granted liberty therein to the petitioner to pursue its application under Section 149 and place such documents as may be contemporaneous with the import before the officer for his consideration.

10. In the present case, the document is a statutory Notification. The authority is directed to hear the petitioner, consider applicability or otherwise of the Exemption Notification to its case and pass orders afresh, all within a period of four weeks from date of receipt of this order.

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11. The writ petitions are allowed. No costs. Connected miscellaneous petitions is closed.

09.03.2023

Index:Yes
Neutral Citation:Yes
ssm

To

1.The Authorised Officer
SIPCOT Hi-tech Special Economic Zone,
Sriperumbudur Taluk,
Oragadam, Kancheepuram Dt. 602 105.

2.The Commissioner of Customs (Chennai Import)
Customs House, No.60, Rajaji Salai,
Chennai – 600 001.

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DR. ANITA SUMANTH,J.

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