



WEB COPY



Writ Petition No.14918 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2023

C O R A M

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

Writ Petition No.14918 of 2022
and W.M.P.No.14138 of 2022

M/s.Float Glass Centre
represented by its Authorized Signatory,
Mr.M.Madanagopal
No.23/55, Devarajan Street,
Park Town, Chennai - 600 003.

... Petitioner

Vs.

1.The Assistant Commissioner of Customs,
Chennai IV Commissionerate,
Custom House, No.60, Rajaji Salai,
Chennai - 600 001.

2.The Commissioner of Customs (Appeals-II),
Custom House, No.60, Rajaji Salai,
Chennai - 600 001.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to impugned order in Appeal Seaport.C.Cus.II No.281-299/2022 dated 19.05.2022 issued by the second respondent and quash the same and direct the first respondent to reclassify the goods covered under the impugned order, under Customs Tariff Heading 70051090 and



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extend the benefit of Sl.No.934 of Notification No.46/2011-Cus dated 01.06.2011.

For Petitioner : Mr.L.Gokulraj

For Respondents : Mr.J.Vasu, JPC

ORDER

This writ petition has been filed seeking quash of the order passed by the second respondent in Appeal Seaport.C.Cus.II No.281-299/2022 dated 19.05.2022 and consequently, direct the first respondent to reclassify the goods covered under the impugned order, under Customs Tariff Heading 70051090 and extend the benefit of Sl.No.934 of Notification No.46/2011-Cus dated 01.06.2011.

2. Heard Mr.L.Gokulraj, learned counsel for petitioner and Mr.J.Vasu, learned counsel appearing for respondents.

3. Though an alternate remedy is very much available to file an appeal before the CESTAT, the petitioner has filed this writ petition before this Court. This Court also entertained the writ petition and granted interim stay in the year 2022. This matter is pending for the past



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one year. At this stage, this Court does not want to reject the prayer of the petitioner on the ground that alternate remedy is available and direct the petitioner to file an appeal before the CESTAT since on the face of it, it is apparent that the second respondent has merely recorded the entire grounds, recorded the submissions made at the time of personal hearing and passed the order under challenge. The operative portion of the impugned order reads thus:

"7. The appellant has submitted that they were forced to clear the goods on enhanced value as these were urgently needed and also to avoid demurrage. However, the appellant had neither produced any technical inputs or substantive evidence in support of their arguments nor any protest was registered by them before payment of duty on enhanced value."

4. The main issue raised by the petitioner in the present case is with regard to classification issue. According to the petitioner, the product has to be classified as CTH 70051090, however, it has been wrongly classified as CTH 70052990 by the respondent department. An elaborate submission has been made on the point that the second respondent has not even touched upon the issue with regard to classification and passed a non-speaking order.



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5. In the aforesaid circumstances, this Court is inclined to pass the following order:

- (i) the impugned order passed by the second respondent in Appeal Seaport.C.Cus.II No.281-299/2022 dated 19.05.2022, is set aside and the matter is remitted back to the file of second respondent for re-consideration;
- (ii) the second respondent is directed to afford an opportunity of personal hearing to the petitioner, deal with all the submissions made by the petitioner including the aspect of classification issue and pass appropriate orders on merits and in accordance with law. The entire exercise shall be completed within a period of two (2) months from the date of receipt of a copy of this order.

This writ petition is disposed of with the above direction. No costs. Consequently, connected miscellaneous petition is closed.

23.11.2023

Index: yes/no
Speaking Order/Non-speaking Order
Neutral Citation : yes/no
gm



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KRISHNAN RAMASAMY, J

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