IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2023

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.No.18190 of 2023

Samsung India Electronics Private Limited
Through Its Authorized Signatory
Nikhil Aggarwal , Aged About 46 Years,
Having Corporate Office At:
20th - 24th Floor,Two Horizon Centre,
Golf Course Road, Sector 43, DLF Phase V,
Gurugram – 122 022, Haryana
Also having local office at
10, No.49/50L, EA Chamber,
Tower 2 , Whites Road, Royapettah,
Chennai – 600 014, TN. .. Petitioner

vs

1.The Principal Commissioner of Customs (Air),
Air Cargo Complex, New Customs House,
GST Road, Meenambakkam,
Chennai 600 027, Tamil Nadu

2.The Deputy Commissioner of Customs
Group 5B, Air Cargo Complex,
New Custom House, GST Road,
Meenambakkam,
Chennai 600 016 .. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of declaration declaring to hold that petitioner was eligible to import mobile phones under on payment of 1 percent countervailing duty under serial no. 263 A of Notification No. 12 / 2012 CE dated 17.03.2012 as amended by 04/ 2014 CE dated 17.02.2014 for imports made under Bill of Entry No 9192335 dated 11.05.2015, 9266157 dated 18.05.2015, 9152534 dated 07.05.2015, 9222820 dated 13.05.2015, 9187972 dated 11.05.2015, 9193342 dated 11.05.2015, 9192262 dated

11.05.2015 and 9201253 dated 12.05.2015 and directing the 2nd respondent to implement the order passed in Appeal C.Cus I No 619 to 626 / 2015 dated 30.09.2015.

For Petitioner	:	Mr.Priyaojeet Chatterjee
For Respondents	:	Mr.V.Sundareswaran Senior Panel Counsel

ORDER

Mr.Sundareswaran, learned Senior Panel Counsel, accepts notice for the respondents and is armed with instructions to enable a disposal of this matter at this juncture.

2. The petitioner is a Company and seeks a declaration to the effect that it was eligible to import mobile phones on payment of 1% countervailing duty (CVD) under serial no. 263A of Notification 12/2012 – CE dated 17.03.2012 as amended by Notification 04/2011 – CE dated 17.02.2014 for imports made under various bills of entry [No 9192335 dated 11.05.2015, 9266157 dated 18.05.2015, 9152534 dated 07.05.2015, 9222820 dated 13.05.2015, 9187972 dated 11.05.2015, 9193342 dated 11.05.2015, 9192262 dated 11.05.2015 and 9201253 dated 12.05.2015] (hereinafter referred to as 'bills of entry').

3. According to petitioner, the issue relating to payment of duty had travelled by way of first Appeal to the Commissioner (Appeals), who by order dated 30.09.2015, found that no speaking order has been passed by the assessing authority as stipulated under Section 17(5) of the Customs Act, 1962 and remanded the matter. The operative portion of the order reads thus:-

> *"I have gone through the facts of the case, grounds of appeal and the submission made. The appellants have imported mobile phones under CTH 8715 (Sl.no.263A) claiming concessional rate of 1% CVD under Condition No.16 of the Notification No.12/2012- Central Excise dt. 17.3.2012. The lower authority assessed all the above bills of entry on merit rate of duty and denied concession of 1% CVD claimed by the appellant. The Hon'ble Supreme Court in the case of SRF Ltd v CC (Civil Appeal No.1623 of 2009) decided on 26.03.2015 has held that the importer is also entitled to the benefit of concessional rate of duty similar to the domestic manufacturer even if the concessional rate of duty is subject to the condition that no credit under Rule 3 or Rule 13 of the CENVAT Credit Rules, 2004 should have been taken in respect of inputs or capital goods used in the manufacture of these goods. Hence, the appellant based on the above order of the Apex Court has claimed the concessional rate of duty. But the lower authority has not extended the same and the appellants paid the merit rate of CV duty under protest and cleared the goods. The lower authority has not passed any speaking order for denying the concession. There may be reasons for denying the concession by the lower authority but he should have made it known by issuing a speaking order for such a denial. He has not done so. I, therefore, direct the lower authority to issue a*

> *speaking order as stipulated under Section 17(5) of the Customs Act, 1962 within 15 days from the date of receipt of this order duly following principles of natural justice and also taking cognizance of the above order of the Hon'ble Apex Court. The appeal is allowed on the above terms."*

4. Thus, in conclusion, the appellate authority directs the assessing authority, citing the judgment of the Hon'ble Supreme Court in the case of *SRF Limited v Commissioner of Customs* (C.A.No.1623 of 2009 decided on 26.03.2015), to pass speaking orders within fifteen days from date of receipt of his order following the principles of natural justice. It was incumbent upon the respondent officer to have issued notice to the petitioner, hear it, take note of the judgment as aforesaid and pass a speaking order.

5. Mr.V.Sundareswaran, learned Senior Panel Counsel, on instructions, submits that no order appears to have been passed thus far. It is also the petitioner's case that no notice has been issued to it pursuant to the order of the first appellate authority. Thus, this order is passed on the premise that effect has not been given to the above order of the Commissioner (Appeals).

6. Declaration of the nature as sought for by the petitioner is not liable to be granted, as it would tantamount to interference

with the process of assessment and hence this prayer is rejected. In light of the admitted delay in giving effect to the order of the first appellate authority, this Court moulds the relief to which the petitioner is entitled, and instead issues mandamus to R2, being the Deputy Commissioner of Customs, Group 5B, Air Cargo Complex, New Custom House, GST Road, Meenambakkam, Chennai, to pass orders in consequence to the order of the first appellate authority.

7. For this purpose, and bearing in mind the elapse of time from 2015 till date, the petitioner is permitted to appear before R2 on Wednesday i.e., 28.06.2023 at 10.30 a.m. for which no notice need to be issued separately by R2. Let the judgment of the Hon'ble Supreme Court in *SRF v Commissioner of Customs, Chennai* [318 ELT 2017] be taken note of by the officer. In addition, petitioner relies upon an order-in-original dated 04.11.2022 passed by the Principal Commissioner of Customs, Air Cargo Complex (Import), passed in its own case relating to an identical issue as canvassed in the writ petition and relating to imports made in Delhi. The conclusion is in favour of the petitioner and reads thus:-

> *"17. Accordingly, I pass the following order:*
>
> *ORDER*
>
> *i. I hold that the benefit of S.No.263A of the Notification No.12/2012-CE dated 17.03.2012 is available to the goods declared as mobile*

> *phones imported vide bills of entry numbered 9271230 dated 18.05.2015, 9266207 dated 18.05.2015, 9050714 dated 27.04.2015, 9282754 dated 19.05.2015 and 9266181 dated 18.05.2015, and accordingly, I order for re-assessment of the said bills of entry Section 17(4) read with Section 17(5) of the Customs Act, 1962.*
>
> *18. This order is issued without prejudice to any action that may be initiated or contemplated under the Customs Act, 1962 or any other act that may be in force."*

8. Let orders be passed by R2 within a period of eight weeks from date of personal hearing i.e., on or before 28.08.2023. Writ petition stands disposed as above. No costs.

20.06.2023

Index:Yes
Neutral Citation:Yes
ssm

To:

1.The Principal Commissioner of Customs (Air),
Air Cargo Complex, New Customs House,
GST Road, Meenambakkam,
Chennai 600 027

2.The Deputy Commissioner of Customs
Group 5b, Air Cargo Complex New Custom
House, GST Road, Meenamakkam,
Chennai 600 016

DR. ANITA SUMANTH,J.

ssm

W.P.No.18190 of 2023

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