IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **07.12.2023**

CORAM:

THE HON'BLE MR. JUSTICE KRISHNAN RAMASAMY

W.P No.30579 of 2023

Johnson Lifts Private Limited,
Represented by Shri S.Vijayasubramaniyan
No.1, East Main Road,
Anna Nagar, Western Extension,
Chennai 600 101. ... Petitioner

vs.

The Deputy Commissioner of Customs-Group V,
Office of the Commissioner of Customs,
Custom House, No.60, Rajaji Salai,
Chennai – 600 001. ... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of mandamus directing the respondent to pass a speaking order in terms of Section 17 (5) of the Customs Act, 1962 with regard to the classification adopted by the petitioner for the goods imported in the Bill of Entry No.3185774 dated 05.11.2022.

For Petitioner	:	Mr.Joseph Prabakar
For Respondent	:	Mrs.R.Hemalatha Senior Standing Counsel

O R D E R

This writ petition has been filed to direct the respondent to pass a speaking order in terms of Section 17 (5) of the Customs Act, 1962 with regard to the classification adopted by the petitioner for the goods imported in the Bill of Entry No.3185774 dated 05.11.2022.

2. The case of the petitioner is that he imported the goods, (parts of elevator) under Bill of Entry No.3185774 dated 05.11.2022 and made self-assessment in terms of provisions of Section 17 (1) of the Customs Act, 1962. However, the respondent has rejected the self-assessment made by the petitioner and assessed the goods under different classification by virtue of Bill of Entry No.3185774 dated 05.11.2022. As the imported items were urgently required by the petitioner and the delay would cause demurrage/detention charges, the petitioner cleared the goods on payment of duty, as demanded by the respondent. As per Section 17(5) of the Customs Act, 1962, when the assessing officer does not accept the classification of goods adopted by the importers and carries out re-assessment, the said authority has to issue a speaking order within 15 days from the date of assessment. But, the respondent has not passed

any speaking order. Hence, the petitioner addressed a letter dated 23.11.2022 to the respondent for issuing a speaking order which would enable the petitioner to file an appeal before the Appellate Authority. However, the respondent has not passed any speaking order. Hence, the petitioner has come out with the present writ petition.

3. The learned counsel appearing for the petitioner would submit that, in the event if the respondent is making re-assessment, contrary to the self-assessment made by the importer, it is mandatory for the the proper officials to pass a speaking order, within a period of 15 days from the date of re-assessment in terms of Section 17 (5) of the Act. However, in the present case, no such speaking order was passed by the respondent. Hence, the learned counsel would urge this Court to give appropriate direction to the respondent.

4. The learned Senior Standing Counsel for the respondent, after filing counter and getting instructions from the respondent, would fairly admitted that in the present case, though the re-assessment was made under different classification, no reasons have been assigned for such re-assessment by the Assessing Officer, which he is supposed to do

so within a period of 15 days from the date of re-assessment, as per Section 17(5) of the Customs Act, 1962. She would further submit that if this court passes any order, the same would be considered by the respondent.

5. I have given due consideration to the submissions made by the learned counsel appearing for the petitioner as well as the learned Senior Standing Counsel appearing for the respondent and perused the materials available on record.

6. In the present case, the petitioner imported the goods and made self-assessment in terms of Section 17 (1) of the Customs Act, 1962. However, the respondent, by virtue of Bill of Entry No.3185774 dated 05.11.2022 classified the goods imported by the petitioner under different heading. When the respondent refuses to accept the self-assessment made by the petitioner and intend to re-assess the imported goods under different classification, in terms of Section 17(5), he is supposed to pass a speaking order, assigning the reasons for such re-assessment. In this context, it would be appropriate to refer Section 17(5) of the Customs Act, which reads as follows -

"*17. Assessment of duty*

(1).......

(2)........

(3)........

(4)........

(5) *Where any re-assessment done under sub-section (4) is contrary to the self-assessment done by the importer or exporter and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re-assessment in writing, the proper officer shall pass a speaking order on the re-assessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.*"

7. However, in the present case, on a perusal of the Bill of Entry, it is apparently clear that the Proper Officer has failed to pass such speaking order on the re-assessment as per provision of Section 17 (5) of the Customs Act, 1962.

8. Though the petitioner has sent a letter dated 23.11.2022 to the respondent requesting to pass a speaking order and also keep on requesting the respondent till 17.08.2023, however, unfortunately, the

respondent has failed to pass any such order. Thus, in the above said circumstances, this Court feels it appropriate to direct the respondent to pass a speaking order in terms of provisions of Section 17(5) of the Customs Act, 1962.

9. Accordingly, this Writ Petition is disposed of by directing the respondent to pass a speaking order, in terms of Section 17(5) of the Customs Act, 1962, within a period of 45 days from the date of receipt of a copy of this order. No costs.

07.12.2023

Index: Yes/No
Speaking/Non-Speaking Order
Neutral Citation: Yes/No.
rgr

To

The Deputy Commissioner of Customs-Group V,
Office of the Commissioner of Customs,
Custom House, No.60, Rajaji Salai,
Chennai – 600 001.

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