IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **24.01.2024**

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

Writ Petition No.6456 of 2022

M/s.Hanon Automotive India Private Limited,
Represented by its Authorised Signatory,
Mr.T.A.Bhaskaran,
Keelakaranai Village,
Malrosapuram Post,
Maraimalai Nagar, Chengalpattu,
Tamil Nadu-603 204. ... Petitioner

-vs-

1.The Commissioner of Customs,
Chennai-II Commissionerate,
Custom House, 60,
Rajaji Salai,
Chennai-600 001.

2.The Deputy Commissioner of Customs,
Group-5,
Chennai-II Commissionerate,
Custom House, 60,
Rajaji Salai,
Chennai-600 001. .. Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records relating to the Impugned Order-in-Original No.87525/2022 dated 24.01.2022 passed by the 2nd respondent and quash the same as it is contrary to the provisions of the Customs Act, 1962 and manifestly erroneous and to direct the 2nd respondent to amend the relevant Bills of Entry as prayed for by the petitioner.

For Petitioner : Mr.Raghavan Ramabadran

For Respondent : Mr.S.Gurumoorthy, Senior Standing Counsel

ORDER

The petitioner assails an order dated 24.01.2022 of the 2nd respondent refusing to amend 21 bills of entry.

2. The petitioner states that it is engaged in the manufacture of automotive parts such as radiators, compressors, inter-coolers, air-conditioners etc, meant for use in passenger cars. Between 01.10.2020 and 13.11.2020, the petitioner imported components from the Republic of Korea and the Kingdom of Thailand for use in the manufacture of various products under the 21 bills of entry set out in the impugned order at internal

page 2. The petitioner asserts that Notification Nos.151/2009-Cus. and 152/2009-Cus. dated 31.12.2009 were issued by the Central Government in exercise of powers under Section 25 of the Customs Act, 1962 (the Customs Act) to provide for exemption from Basic Customs Duty (BCD) in respect to goods originating from the Republic of Korea. As per the Notification, the petitioner asserts that exemption from BCD is available for the import subject to satisfying the Deputy Commissioner of Customs that the goods originated from the Republic of Korea and the import was made in accordance with the provisions of the Customs Tariff (Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of the Republic of India and the Republic of Korea) Rules, 2009. Similarly, it is stated that Notification No.46-2011-Cus. dated 01.06.2011 was issued for providing exemption from BCD with regard to goods originating from the Kingdom of Thailand. The petitioner also places reliance on the Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 (CAROTAR), which came into effect from 21.09.2020.

3. According to the petitioner, BCD exemption was claimed under the

above mentioned exemption Notifications in compliance with CAROTAR as regards the bills of entry at Sl.Nos.1 to 8 in the table set out at internal page 2 of the impugned order. With regard to the bills of entry at Sl.Nos.9 to 21 of the above mentioned table, it is stated that the petitioner cleared the goods for home consumption on payment of duty at merit rate in view of the considerable delay experienced while clearing goods by availing preferential duty benefits.

4. In the above circumstances, after clearance of the imported goods, the petitioner requested the 2nd respondent to extend the benefit of the exemption notifications and reassess the bills of entry. Such request was rejected. The matter was carried in appeal to the Commissioner (Appeals), who remanded the matter to the 2nd respondent for re-examination. The order impugned herein was issued pursuant thereto.

5. Learned counsel for the petitioner invited my attention to the impugned order and contended that the said order was issued by completely misconstruing Section 149 of the Customs Act. In particular, learned counsel

submitted that the finding recorded in the impugned order to the effect that a request for amendment should be confined to rectification of inadvertent and/ or bona fide errors is contrary to the language of Section 149. With reference to the language of Section 149, he submits that a request for amendment may be made after the imported goods have been cleared for home consumption provided relevant documentary evidence in support of exemption was in existence at the time when goods were cleared. Therefore, learned counsel submits that the Deputy Commissioner of Customs should have examined whether all relevant documents were in existence at the time the goods were cleared for home consumption. Since such exercise was not carried out and the request for amendment was rejected on untenable grounds, he submits that interference is warranted.

6. In response to these contentions, learned counsel for the respondents submits that the question as to whether the relevant documents were in existence at the time of clearance of the goods is a factual question which cannot be determined in proceedings under Article 226 of the Constitution of India. He further submits that an appellate remedy is

available to the petitioner.

7. The case turns on the interpretation of Section 149 of the Customs Act, which is set out below:

> *"**Section 149 Amendment of documents-***
>
> *Save as otherwise provided in Sections 30 and 41, the proper officer may, in his discretion, authorise any document, after it has been presented in the custom house to be amended:*
>
> *Provided that no amendment of a bill of entry or a shipping bill or bill of export shall be so authorised to be amended after the imported goods have been cleared for home consumption or deposited in a warehouse, or the export goods have been exported, except on the basis of documentary evidence which was in existence at the time the goods were cleared, deposited or exported, as the case may be. "*

The principal clause enables the proper officer to authorise amendment of any document after it was presented to the Customs House. The proviso thereto prescribes that no amendment of a bill of entry or a shipping bill or a bill of export shall be authorised after the imported goods were cleared for home consumption or deposited in a warehouse or after goods were exported except on the basis of documentary evidence which was in existence at the time the goods were cleared, deposited or exported, as the case may be.

8. The text of the proviso makes it clear that amendment is permissible only on the basis of documentary evidence that was in existence at the time the goods were cleared, deposited or exported. Significantly, the provision does not record that the relevant documentary evidence should have been produced or submitted at the time of clearance of goods. In this connection, learned counsel for the petitioner also placed on record a communication dated 13.11.2020 with regard to difficulties faced by traders in the implementation of CAROTAR. The said communication recognises that importers are not required to submit Form I while filing bills of entry as per Rule 4 of CAROTAR and that Rule 5 does not prescribe that the proper officer should ask for Form I in every case where a preferential duty claim is made. The said communication is in consonance with Section 149 of the Customs Act.

9. In the impugned order at internal page 6 thereof, the Deputy Commissioner has recorded the following finding:

> *"As a lower adjudicating authority, I am bound by the decision of higher judicial forums. But in order to implement the spirit of these orders, it is required to ascertain whether the amendments sought by the Importer are for rectifying inadvertent and/ or bonafide errors."*

The above finding has been recorded based on the misconception that the ambit of Section 149 is confined to the rectification of inadvertent and/ or bona fide errors. There is nothing in the language of Section 149 that justifies such a curtailed reading of the scope thereof.

10. For reasons set out above, the impugned order calls for interference. As indicated earlier, the relevant question to be considered when an application for amendment is submitted is whether documentary evidence in support of the claim for exemption from BCD was in existence at the time of clearance of goods. The matter is remanded to the Deputy Commissioner for reconsideration so as to determine whether Form I in respect of bills of entry at Sl.Nos.1 – 8 of the table at page 2 of the impugned order and both the certificate of origin and Form I in respect of bills of entry

at Sl.Nos.9 – 21 of the table at page 2 of the impugned order were in existence at the time of clearance of the goods under the relevant bills of entry.

11. W.P.No.6456 of 2022 is disposed of on the above terms by directing that the application filed by the petitioner be considered after providing a personal hearing to the petitioner. Such exercise shall be completed within a maximum period of two months from the date of receipt of a copy of this order. There will be no order as to costs.

24.01.2024

Index : Yes / No
Internet : Yes / No
Neutral Citation: Yes / No
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SENTHILKUMAR RAMAMOORTHY,J

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To

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Chennai-II Commissionerate,
Custom House, 60,
Rajaji Salai,
Chennai-600 001.

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