IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.08.2024

CORAM

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

W.P.No.21910 of 2024
and W.M.P.No.23897 of 2024

Delphi TVS Technologies Limited,
Represented by its Chief Financial Officer,
Mr.B.Swaminathan,
No.11-13, Patullos Road, Chennai - 600 002. ... Petitioner

Vs.

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

2. The Deputy Commissioner of Customs, (Group 5B),
Import Commissionerate,
Custom House, No.60, Rajaji Salai,
Chennai - 600 001. ... Respondents

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorarified Mandamus, to call for the records and quash order-in-original No.107163/2024, dated 04.06.2024 issued by the second respondent and quash the same and consequently, to direct the second respondent to provide all documents and considered the submissions of the petitioner before passing any orders.

For Petitioner : Mr.Rohan Muralidharan

For Respondents : Mr.A.P.Srinivas
Senior Standing Counsel

- - - - -

ORDER

The present Writ Petition is filed for the issuance of a Writ of Certiorarified Mandamus, to call for the records of the second respondent bearing impugned order No.107163/2024, dated 04.06.2024 and quash the same.

2. The learned counsel for the petitioner submits that in April, 2024, the petitioner imported two models of Electronic Control units vide two Bills of Entry and classified these under CTI 9032 89 90 in line with the past practice. Since the goods were originating from Singapore and were supported by a valid Certificates of Origin, the petitioner claimed the preferential rate of tariff benefit under Sl.No.1559 of Notification No.46/2011-Cus, dated 01.06.2011 (FTA exemption notification). The Bills of Entry were pushed to the Port Assessment Group for verification wherein the Department raised a query on 29.04.2024 to substantiate the classification of goods under CTH 9032 and also stated that in light of orders of other importers, the goods merit classification under CTH 8708.

3. He further submits that in response to the query, the petitioner, on 03.05.2024 submitted the technical write-up and substantiated the classification of the goods under CTH 9032. The petitioner also submitted that without prejudice to its submissions, even if the goods are classifiable under CTI 8708 99 00 as proposed by the Department, the subject goods are eligible for benefit of preferential BCD of 5% in terms of Sl.No.1478 of the FTA exemption notification. A personal hearing was granted to the petitioner on 07.05.2024 and the petitioner requested for clearance of goods by payment of duty under protest and issuance of a speaking order.

4. He further submits that on 07.06.2024, the second respondent passed the impugned order wherein the goods have been reclassified under CTH 8708 and it is held that all future imports of Electronic Control Units shall be classified by the importer under CTH 8708. However, the second respondent has failed to consider the submissions of the petitioner regarding the alternate claim under FTA exemption notification, which is contrary to principles of natural justice and the impugned order is passed without application of mind. Hence, the same may be set aside.

5. Mr.A.P.Srinivas, learned Senior Standing Counsel appearing for the respondents would submit that a detailed speaking order was passed by the respondent after considering the reply filed by the petitioner. Therefore, the petitioner cannot complain of the breach of principles of natural justice. However, he would fairly submit that for the issue of classification, the matter may be remitted back to the respondents for consideration.

6. Heard the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents and perused the materials placed before this Court.

7. Both the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents contended that there is a speaking order passed by the respondents. The main grievance of the petitioner is that the reply filed by the petitioner was not considered properly. The respondents ought to have perused the said issue with regard classification of goods. Since there is an alternate remedy available to the petitioner, the party can very well approach the appellate authority by filing an appeal. Therefore, this Court is not inclined to interfere with the speaking order passed by the respondents as there is no merits in the Writ Petition, and accordingly, the Writ Petition is dismissed.

While dismissing the Writ Petition, liberty is granted to the petitioner to file an appeal before the appellate authority within a period of four (4) weeks from the date of receipt of a copy of this order. The appellate authority is directed to take the appeal to be filed by the petitioner, on record, and pass orders on merits and in accordance with law. There shall be no order as to costs. Consequently, the connected Miscellaneous Petition is closed.

13.08.2024

asi

To

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

2. The Deputy Commissioner of Customs, (Group 5B),
   Import Commissionerate,
   Custom House, No.60, Rajaji Salai,
   Chennai - 600 001.

KRISHNAN RAMASAMY, J.

asi

W.P.No.21910 of 2024 and
W.M.P.No.23897 of 2024

13.08.2024