IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.09.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.25972 of 2021
and
W.M.P.No.27426 of 2021

M/s.Plastone UPVC Profiles Private Limited,
Represented by its Chief Operating Officer ... Petitioner

Vs.

The Assistant Commissioner of Customs (Group 2),
Custom House,
No.60, Rajaji Salai,
Chennai – 600 001. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records pertaining to the impugned final assessment made in bill of entry no.3647348 dated 21.04.2021 by the respondent and quash the same.

For Petitioner : Mr.Hari Radhakrishnan

For Respondent : Mr.Rajendran Raghavan
Senior Standing Counsel

ORDER

The petitioner is before this Court against the Impugned Final Assessment made in Bill of Entry No.3647348 dated 21.04.2021 by the respondent.

2. It is the specific case of the petitioner that the petitioner has imported goods namely "UPVC Profiles" under Customs Tariff Heading (CTH) 3916 2019 which attracts Basic Customs Duty at 10%. However, the respondent assessed the Bill of Entry No.3647348 dated 21.04.2021 under a Customs Tariff Heading (CTH) 3925 2000 at 15%. The imported goods are doors, windows and their frames and thresholds for doors.

3. Learned counsel for the petitioner submits that the reclassification under the subject Bill of Entry under Customs Tariff Heading (CTH) 3925 2000 has been imposed on the petitioner contrary to the mandate of Regulation 6(3) of the Customs (Finalization of Provisional Assessment) Regulations, 2018. He would further submit that the respondent has to pass a speaking order in terms of Section 18 of the Customs Act, 1962 read with Regulation 6 of the aforesaid Regulation.

4. Learned counsel for the petitioner has drawn attention to the Check List dated 17.04.2021 filed in respect of Bill of Entry No.3647348 to substantiate that the details that were filed by the petitioner at the time of import clearly stated that the imported item was UPVC profiles which merits classification classifiable under Customs Tariff Heading (CTH) 3916 2019.

5. It is submitted that in respect of the identical import by the petitioner vide Bill of Entry No.6397190 dated 23.11.2021, a speaking order was passed by the respondent counter part from Gujarat namely the Deputy Commissioner of Customs, Customs House, Gujarat Pipavav Port Limited, Pipavav, Gujarat, wherein classification adopted by the petitioner has been accepted vide Assessment Order dated 26.12.2022 bearing Ref.F.No.VIII/06-18/39/20-21/1367 vide Order-in-Original No.06/DC/KKK/GPPL/2022-23.

6. The learned counsel for the petitioner therefore submits that Customs Act, 1962 and Customs Tariff Act, 1975 being Central Enactment, uniformity in classification has to be adopted.

7. Opposing the prayer, the learned Senior Standing Counsel for the respondent would submit that the assessment was completed based on the declaration filed by the petitioner and therefore it is not open for the petitioner to ask the respondent to pass a speaking order in terms of Section 18 of the Customs Act, 1962 read with Regulation 6 of the aforesaid regulation. It is further submitted that direct appeal can be filed by the petitioner before the Appellate Commissioner under Section 128 of the Customs Act, 1962 and therefore the writ petition filed by the petitioner lacks merit and deserves to be dismissed.

8. The learned Senior Standing Counsel for the respondent would submit that after the petitioner had filed the Check List on 17.04.2021, the petitioner was clearly informed that the imported item was classifiable under the Customs Tariff Heading (CTH) 3925 2000 pursuant to which, the subject Bill of Entry was finally assessed under the aforesaid Customs Tariff Heading. Hence, it is further submitted that the Department had raised a query on the petitioner regarding classification declared by the petitioner and pointed out the classification under the Customs Tariff Heading (CTH) 3925 2000 and the

differential duty should also be paid by the petitioner and that a clarification advice was sent to the petitioner through Indian Customs EDI Systems (ICES) on 26.04.2021 and that the petitioner had accepted to the same and therefore it is not open for the petitioner to rely on regulation 6(3) of the Customs (Finalization of Provisional Assessment) Regulations, 2018 issued for the purpose of finalization of the Bills of Entry which were originally provisionally assessed under Section 18 of the Customs Act, 1962.

9. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondent.

10. There are no documents forthcoming from the respondent to indicate that the petitioner had indeed accepted the classification of the imported item under the Customs Tariff Heading (CTH) 3925 2000. The data that is available in the Check List dated 17.04.2021 indicates that the petitioner has taken a categorical stand that the imported item was UPVC profiles, merits classification under the Customs Tariff Heading (CTH) 3916 2019.

11. That apart, it is noticed that import by the petitioner from the Gujarat Pipavav Port Limited has been now assessed under the Customs Tariff Heading (CTH) 3916 2019 attracting 10% customs duty.

12. Under these circumstances, there shall be a positive direction to the respondent to pass a fresh order on merits in accordance with Regulation 6(3) of the Customs (Finalization of Provisional Assessment) Regulations, 2018 within a period of six weeks from the date of receipt of a copy of this order.

13. Needless to state, before passing such order, the petitioner shall be heard.

14. This Writ Petition is disposed of with the above observations and directions. No costs. Connected Writ Miscellaneous Petition is closed.

13.09.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No

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To

The Assistant Commissioner of Customs (Group 2),
Custom House,
No.60, Rajaji Salai,
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C.SARAVANAN, J.

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