IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2025

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

W.P. No.31980 of 2022 and W.M.P. Nos.31417 & 31418 of 2022

M/s.D&M Building Products Pvt. Ltd.,
rep. by its Director .. Petitioner

vs.

Deputy Commissioner of Customs (Group 4),
Customs House, 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 on the file of the respondent herein in Order-in-Original No.93547/2022 dated 20.10.2022 bearing DIN 20221073MX0000520545 and to quash the same and consequently direct the respondent to extend the benefit of FTA by allowing the customs duty exemption under Sl.No.992 of Notification No.46/2011-Cus dated 01.06.2011 and refund the customs duty of Rs.22,14,108/- along with interest, which was paid by the petitioner in protest vide letter dated 21.07.2022.

For Petitioner : Mr.V.Raghuraman,
Senior Counsel for
Mr.Raghavendra C.R.

For Respondent : Mr.B.Ramana Kumar,
Senior Standing Counsel

ORDER

This writ petition has been filed challenging the impugned order in original dated 20.10.2022.

2.Under the impugned order in original, the goods imported by the petitioner vide Bill of Entry No.9156207 dated 17.06.2022 has been classified under CTH 76109030 without extending the FTA benefit under Notification No.046/2011 Sl.No.992(I).

3.The petitioner categorically contends that even if the petitioner's goods imported vide the aforementioned Bill of Entry is classified under CTH 76109030, the petitioner is not liable to pay customs duty as per the Exemption Notification No.046/2011. Learned counsel for the petitioner would submit that by total non-application of mind to the aforesaid fact, the impugned order in original has been passed. He drew the attention of this Court to the Exemption Notification No.46/2011-Cus dated 01.06.2011 and would submit that insofar as Sl.Nos.992 as well as 995 are concerned, the goods are exempted from payment of customs duty. Therefore, according to the petitioner, even if the imported goods are assessed for customs duty as per the respondent's own statement, the petitioner is not liable to pay customs duty. He also drew the attention of this Court to the impugned order and would submit that the Exemption Notification, referred to supra, has not been considered by the respondent, while passing the impugned order in original.

4.Learned Standing Counsel appearing for the respondent would rely upon Section 28DA(10) of the Customs Act 1962 and would submit that notwithstanding anything contained in Section 28DA(10), the preferential tarriff treatment may be refused by the respondent without verification in the circumstances mentioned in Section 28DA(10) of the Customs Act, 1962.

5.According to the respondent, the case of the petitioner falls under one of the circumstances mentioned in Section 28DA(10) of the Customs Act, 1962 and therefore, according to him, the respondent has rightly passed the impugned order in original.

6.Learned Standing Counsel for the respondent would submit that involving an identical matter, the Hon'ble Supreme Court is seized of the matter.

7.However, as seen from the impugned order in original, the Exemption Notification No.46 of 2011-cus, which has been relied upon by the petitioner before this Court, which according to the petitioner exempts the petitioner from payment of customs duty for the goods imported by them under the subject Bill of entry, has not been considered by the respondent in the impugned order in original. A categorical assertion has been made by the petitioner that they are not liable to pay customs duty as per the aforementioned notification and they have also categorically contended that even if the classification of the goods as stated by the respondent is accepted, the petitioner is not liable to pay customs duty. Since the Exemption Notification No.46/2011-cus, referred to supra, has not been considered by the respondent, this Court is of the considered view that unless and until the same is considered, on merits and in accordance with law by the respondent, the petitioner's rights to claim exemption from payment of customs duty will be defeated if the petitioner is able to satisfy the respondent that they are exempted from payment of customs duty. Since the Exemption Notification, referred to supra, has not been considered in the impugned order in original, this Court is of the considered view that the impugned order in original has been passed by the respondent by total non-application of mind to the Exemption Notification No.46/2011-cus, referred to supra. Therefore, the impugned order in original has to be quashed and the matter has to be remanded back to the respondent for fresh consideration, on merits and in accordance with law, after affording an opportunity of personal hearing to the petitioner.

8.The contention of the respondent that they are entitled to levy customs duty by applying Section 28DA (10) of the Customs Act, 1962 can also be considered by the respondent in the final order to be passed by them pursuant to the order of remand. This Court is not expressing any opinion on the merits of the petitioner or the respondent's case.

9.Accordingly, the impugned order in original dated 20.10.2022 is hereby quashed and the matter is remanded back to the respondent for fresh consideration, on merits and in accordance with law. The respondent shall pass final orders, on merits and in accordance with law within a period of eight weeks from the date of receipt of a copy of this order, after giving due consideration to the Exemption Notification No.46/2011 dated 01.06.2011, which has been relied upon by the

ABDUL QUDDHOSE, J.

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petitioner in this writ petition, after affording an opportunity of one personal hearing to the petitioner.

10.With the above direction, this writ petition is disposed of. No costs.

28.03.2025

Index: Yes/No
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To

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