(2014) 10 MAD CK 0058

In the Madras High Court

Case No : W.P. No. 13900 of 2014 and M.P. No. 1 of 2014

Alstom T & D India Ltd. APPELLANT

Vs

Dy. Commr. of C. Ex., Ltu RESPONDENT

Date of Decision : 14-10-2014

Acts Referred:

Citation : (2015) 315 ELT 514

Hon'ble Judges : T.S. Sivagnanam, J

Bench : Single Bench

Advocate : Joseph Prabakar, Advocates for the Appellant; K. Ravi Ananthapadmanaban, Advocates for the Respondent

Judgement

T.S. Sivagnanam, J.—By consent of both parties, this Writ Petition is taken up for final disposal. The petitioner has filed this writ petition, praying for the issuance of writ of certiorarified Mandamus, to quash the order passed by the respondent in Proceedings Letter C. No. VIII/06/01/2014 LTG V, dated 6-5-2014 and to direct the respondent to issue the Certificate required under Customs Notification No. 25/99, dated 28-2-1999, for import of Parts and Relays.

2. The petitioner is a Public Limited Company engaged in the manufacture of various electrical equipment like Transformers, Circuit Breakers, Control Panels, Relays etc., and they are registered as a Large Taxpayer Unit (LTU), under the respondent. By virtue of General Exemption No. 160, the Central Government granted concessional rate of duty on goods imported for the manufacture of excisable goods, provided that the importer follows the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996 (hereinafter referred to as "Rules"). Under the said Notification, the descriptions of imported goods and finished goods have been furnished, where, the petitioner has particularly placed reliance on Serial No. 112, and the goods under Chapter/Heading/Sub-Heading of tariff item Nos. 39, 72, 74, 76 and 85 have been given as parts of Relays, Switches, Connectors and the description of finished goods are Relays, Switches, Connectors. The petitioner

filed an application on 1-4-2014 under the said rules and stated that they wish to obtain for the manufacture of Relays as per the description given in the Annexure to the Application and they undertook to use the imported goods as mentioned in the Annexure for the manufacture of Relays and follow any other conditions in the said notification imposed.

3. Pursuant to such application, the respondent issued a communication dated 1-4-2014, calling upon the petitioner to explain as to why (i) The items declared as "Relays" and cleared under CHSH 8536 should not be reclassified under 90328990; (ii) The items imported should not be classified as "parts of automation apparatus" under CETH 9032.9000; (iii) The permission granted for import of the components under concessional rate of duty as per Notfn. No. 25/99-Cus., dated 28-2-1999 (SI. No. 112), should not be denied, as the components imported as well as the final products manufactured appear to fall under different chapter headings other than the hearings specified under the notification and (iv) The differential Customs Duty on the goods imported under concessional rate of duty under bond should not be demanded along with interest. Further the petitioner was directed to furnish a detailed reply with catalogue and technical write-up of the products within a week.

4. The petitioner submitted a reply dated 11-4-2014 enclosing the test report of the Relay Testing Laboratory, Central Power Research Institute, Bangalore; further reply dated 16-4-2014, enclosing the catalogue of the furnished product and further replies, dated 17-4-2014 and 2-5-2014, thereupon, the respondent has passed an order on 6-5-2014, stating that Notification No. 25/99, dated 28-2-1999 at Sl. No. 112 envisages concessional rate only to parts for manufacture of Relays/Switches/Connectors, but not the Relays/Switches/Connectors as such mounted on PCB with other components. Further, it was stated that to study the issue further, it is proposed to draw samples of the disputed items and send the same to IIT, Chennai, for obtaining expert opinion and in the circumstances, pending expert opinion, the Certificate for availing the benefits under Customs Notification No. 25/99 cannot be granted as a measure of abundant caution to safeguard revenue. Challenging the said letter, dated 6-5-2014, this Writ Petition has been filed.

5. Heard Mr. Joseph Prabakar, learned counsel for the petitioner and Mr. K. Ravi Ananthapadmanaban, learned Standing Counsel for the respondent and perused the materials placed along with the writ petition as well as the affidavit filed by the respondent.

6. The issued involved in this writ petition pertains to the classification of the product and classification of the finished product as to whether it would fall within the classification as described in Sl. No. 112 of Exemption Notification No. 25/99, dated 28-2-1999, which states that the finished product if Relays/Switches/Connectors would be entitled to the Concessional rate provided that the importer follows the procedure set out in the said Rules. Since the issue involved as regards as the classification, the Writ Court cannot adjudicate the same. But,

it is for the authorities to adjudicate such issue by affording adequate opportunity to the petitioner.

7. The learned Standing Counsel appearing for the respondent produced before this Court the Expert opinion given by the Scientific Officer Grade-I, Department of Electrical Engineering, IIT Madras, Chennai, dated 1-10-2014, stating that HA and HA Midos type of relays can be classified as simple trip/protection relays. However, the report of IIT Madras was subsequent to the impugned proceedings.

8. Furthermore, it is seen that the authority while passing the impugned order did not adjudicate the issue. The petitioner should have been permitted to agitate the classification issued by placing all materials and such issue could be decided after thorough adjudication. However, the procedure followed while passing the impugned order is a summary procedure. Even in the impugned order, it has been stated that the Department proposed to draw samples for the purpose of obtaining expert opinion. Therefore, the respondent by impugned proceedings have not finally adjudicated the issue or finalised the issue against the importer. However, the petitioner insisted on the certificate for availing the benefits under the exemption notification. This order has been passed on 6-5-2014 to safeguard the interest of the revenue by way of abundant caution pending final adjudication. In such circumstances, this Court is of the view that the observation made in the impugned proceedings, dated 6-5-2014 need not be put against the petitioner when the case is fully adjudicated by the Authority. Accordingly, the writ petition is disposed of by directing the respondent to issue a show cause notice to the petitioner by clearly setting out all the facts and enclosing copy of the document which they proposed to rely and such notice to be issued, within a period of two weeks from the date of receipt of a copy of this order. On receipt of such show cause notice, the petitioner shall submit their reply, within two weeks thereafter and thereafter, the respondent shall afford an opportunity of personal hearing to the petitioner to adjudicate the classification issue with regard to the description of the furnished product, as to whether the petitioner would be entitled to benefit as per Exemption Notification No. 25/1999, in Sl. No. 112, dated 28-2-1999, within a period of four weeks. It is made clear that along with the show cause notice, all the communications relied upon by the Department including the communication/clarification sent to the IIT Madras, shall be furnished to the petitioner. No costs. Consequently, connected miscellaneous petition is also closed.

