(2016) 06 MAD CK 0119

In the Madras High Court

Case No : Writ Petition Nos. 13501-13502 of 2016 & W.M.P. Nos. 11849-11850 of 2016

Srinithi Corporates APPELLANT

Vs

C.C. (Airport & Air Cargo) RESPONDENT

Date of Decision : 10-06-2016

Acts Referred:

Citation : (2016) 340 ELT 322

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

Bench : Single Bench

Advocate : Shri V. Sundareswaran, Senior Panel Counsel, for the Respondent; Shri S. Jaikumar, Advocate, for the Petitioner

Final Decision : Disposed Off

Judgement

T.S. Sivagnanam, J. - Heard Mr. S. Jaikumar, learned Counsel appearing for the petitioner and Mr. V. Sundareswaran, learned Senior Panel Counsel appearing on behalf of the respondents and with the consent of learned counsel appearing on either side, these writ petitions are taken up for final disposal.

2. The petitioner has filed these writ petitions to direct the respondents to assess and clear the bills of entry Nos. 050223 & 0047698, dated 19-9-2015 & 4-9-2015, respectively, in terms of the order passed by the Commissioner of Customs (Appeals-I) in Appeal No. 116/2016, dated 18-2-2016.

3. The facts which are necessary for the disposal of the writ petitions are that the petitioner filed self-assessed Bills of Entries dated 4-9-2015 & 19-9-2015 for clearance of a remote control for Home Theatre, Home Automation etc. The Original Authority raised a query with regard to the classification of the items covered under the Bills of Entries and they were directed to submit the Equipment Type Approval from the Wireless Planning and Co-ordination Wing of the Ministry of Tele-Communications, Government of India, in respect of one of the items viz. Crestron MTX-3 Panel System.

4. This having not been purchased by the petitioner, the Original Authority held that there is a contravention of prohibition imposed under the Indian Wireless Telegraphy Act, 1933 and the said authority confiscated the said item under Section 111(d) of the Customs Act, 1962, without giving the option for redemption. Apart from that penalty of Rs. 10,000/- was imposed on the petitioner under Section 112(a) of the Customs Act, 1962.

5. Aggrieved by the said orders, the petitioner preferred an appeal before the Commissioner of Customs (Appeals-I), stating that the Original Authority has not disputed the band of 24.GHZ to 2.4835 GHZ. and the Rules have clearly and expressly exempted the goods from licence requirements. Further, the petitioner contended that the Rules clearly indicate that such approval to be obtained by the manufacturers of the said wireless equipment and the same cannot be made applicable to the petitioner, since the product in question is a finished product. Further, it is submitted that the goods are not covered under CTH 8453 and are freely importable without any restrictions. Further, the petitioner contended that they themselves have imported similar items earlier and therefore sought for setting aside the order passed by the Assessing Authority.

6. After hearing the petitioner, the Commissioner (Appeals), took into consideration of the facts pleaded and by an order dated 18-2-2016, allowed the appeal, holding that the product viz. Crestron MTX-3 Panel Systems does not require any clearance/licence from the Wireless Planning and Co-ordination Wing of the Ministry of Communications and Information Technology and it can be imported freely.

7. Pursuant to the order passed by the Commissioner (Appeals) dated 18-2-2016, the petitioner submitted a representation requesting that their Bills of Entries may be assessed in terms of the orders passed by the Commissioner (Appeals) and the consignment be released.

8. When the matter came up for hearing on 3-6-2016, the learned Senior Panel Counsel appearing for the respondents on instructions submitted that the as against the order passed by the Commissioner (Appeals) dated 18-2-2016, the respondents have filed appeal before the CESTAT and the matter is likely to be heard shortly. Therefore, to get full instruction in the matter, the case was posted today (10-6-2016). Today, the learned Senior Panel Counsel appearing for the respondents submits that though the appeal has been preferred, the same is yet to be heard and the Petition for Stay is also pending.

9. Taking into consideration of the fact that the order of the Commissioner (Appeals) was passed on 18-2-2016 and the appeal has been presented before the CESTAT on 30-5-2016, within the period of limitation and the appeal having been numbered, this Court is of the view that the respondents should be given a reasonable time to move the Petition for Stay before the CESTAT, failing which the goods should be released in terms of the order passed by the Commissioner (Appeals).

10. Accordingly, the respondents are directed to release the goods in question by assessing the Bills of Entries in terms of the order passed by the Commissioner (Appeals) dated 18-2-2016, after a period of thirty days from the date of receipt of a copy of this order. This time is granted to the Department to enable them to move the Petition for Stay before the CESTAT, if so advised in the interregnum. If the respondents are unable to obtain any orders of stay from the CESTAT, they shall, on expiry of the 30th day from the date of receipt of a copy of this order, assess bills of entries in terms of the order passed by the Commissioner (Appeals) and release the goods within a period of two days therefrom.

11. The writ petitions are disposed of accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.