IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2017

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THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.30233 of 2017
and W.P.M.P.Nos.32925 and 32926 of 2017

M/s.Priyanka Enterprises,
Represented by its Managing Partner
Mr.T.Padmanabha Reddy,
Old No.16/II/393, New No.16-6-129,
Srinivasa Agraharam,
Nellore, Andhra Pradesh. .. Petitioner

..Vs..

The Joint Commissioner of Customs,
Group 1, Custom House,
60, Rajaji Salai, Chennai - 600 001. .. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned order-in-original No.59497/2017 dated 07.11.2017 in F.No.S.Misc.R130/2017-Fr.1 issued by the respondent and quash the same and further direct the respondent to issue appropriate orders for waiver of demurrage and detention charges incurred on the subject goods in terms of Regulation 6(1) of the Handling of Cargo in Customs Areas Regulations, 2009.

For Petitioner : Mr.Hari Radhakrishnan

For Respondents : Mr.G.M.Syed Nurullah Sheriff
Special Government Pleader

O R D E R

Heard Mr.Hari Radhakrishnan, learned counsel appearing for the petitioner and Mr.G.M.Syed Nurullah Sheriff, learned Special Government Pleader appearing for the respondent. With the consent on either side, the writ petition itself is taken up for disposal.

2.The petitioner is before this Court challenging an order-in-original dated 07.11.2017 passed in respect of an import made by the petitioner vide Bill of entry No.3450978 dated 03.10.2017 for clearance of imported goods declared as GSL ARTEMIA BRINE SHRIMP EGGS imported from M/s.Great Salt Lake Artemia, USA with an assessable value of Rs.6,44,71,167/-. The petitioner made a self-assessment of the duty as provided under Section 17(1) of the Customs Act, 1962 by classifying the goods under Customs Tariff Heading 05119911. The petitioner sought to avail concessional duty (preferential rate of 0% IGST as against 5% IGST) by relying upon Notification No.002/2017-Cus dated 28.06.2017 in Sl.No.33. The respondent opined that the item imported by the petitioner should be classified under IGST Notification No.001/2017 Sl.No.I-21 and attracts IGST @ 5%. Therefore, the respondent was of the prima facie view that the exemption claimed by the petitioner for the imported goods does not appear to be correct. Though under normal circumstances a show cause notice should have been issued, the petitioner by letter dated

12.10.2017 requested for adjudication of the case without issuing show cause notice and personal hearing. This was acceded to and the impugned order has been passed. The respondent while passing the impugned order did not restrict himself only to the life consignment covered under Bill of Entry No.3450978 but also in respect of earlier import in Bill of Entry No.2311679 dated 04.07.2017 and proceeded to invoke his powers under Section 111(m) of the Customs Act. The respondent has re-assessed both the Bill of Entries and levied IGST @ 5%, confirmed the payment of differential duty and ordered confiscation of goods giving option to the petitioner to redeem the goods covered in Bill of Entry No.3450978 dated 03.10.2017 on payment of redemption fine of Rs.60,00,000/-. However, the respondent refrained from imposing any redemption fine on the goods imported vide Bill of Entry No.2311679 dated 04.07.2017.

3.Prima facie this Court is of the view that the respondent could not invoke Section 111(m) of the Customs Act as there appears to be no allegation that the goods do not correspond in respect of the value or in any other particular with the entry made under the Act. In the impugned order, the respondent has accepted that there is no dispute in the classification of the goods. However, this Court need not adjudicate the same at this juncture since the petitioner seeks liberty to approach the appellate authority, namely, the Commissioner of Customs (Appeals), Chennai as against the impugned order but would request this Court to exercise its discretion by passing an order for release of the goods subject to conditions the Court may impose on the petitioner. This request is made for two reasons, namely, that the imported goods have a shell life of only six months and already two months have lapsed and further delay would render the product useless apart from causing other complications. The second reason is being that as of now the office of the Commissioner of Customs (Appeals), Chennai is vacant and the Commissioner of Central Excise is holding charge and there may be loss of time before the appeal is taken up for hearing.

4.Thus, considering the above submissions, this Court is inclined to dispose of the writ petition by issuing following directions:

1. The petitioner is granted liberty to file an appeal before the Commissioner of Customs (Appeals), Chennai within a period of thirty days from the date of receipt of a copy of this order.
2. The petitioner is directed to pay the differential duty of Rs.31,70,083/- in respect of the Bill of Entry No.2311679 dated 04.07.2017 as well as the duty quantified on the live consignment covered in Bill of Entry No.3450978 dated 03.10.2017 by calculating the IGST @ 5%. On remittance of the differential duties, the respondent shall provisionally release the cargo within a period of seven days from the date of remittance for both Bills of Entry.

3. In respect of the redemption fine as well as the penalty imposed under Section 112(a) of the Customs Act for the live consignment as demanded in the impugned order, the petitioner shall furnish a bond for the said amount and keep the bond alive till the disposal of the appeal by the Appellate Commissioner.
4. The petitioner is entitled to canvass all points before the appellate authority who shall decide the same on merits and in accordance with law uninfluenced by any observations made in this order.
5. The petitioner shall be entitled to a detention certificate for the period of detention in accordance with the Handling of Cargo in Customs Area Regulations, 2009 by considering the petitioner's application for waiver.

5.With the above directions, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

23.11.2017

cse
Index:Yes/No
Internet:Yes/No
Note: (1) The Registry is directed to return the Original impugned order to the learned counsel for the petitioner.

(2) Issue order copy on 28.11.2017

To

The Joint Commissioner of Customs,
Group 1, Custom House,
60, Rajaji Salai, Chennai - 600 001.

T.S.SIVAGNANAM, J.

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