

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2017

Date of Reserving the Order
Date of Pronouncing the Order
21.09.2017
05.10.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P. No. 25415 of 2017 &
W.M.P. No. 26857 of 2017

M/s. Jaap Auto Distributors,
No.19, Venkatesan 2nd Street,
Mount Road, Chennai- 600 002.
Rep., by its Authorised Signatory,
Shri.Amanpreet Singh Sethi. ... Petitioner

Vs.

The Assistant Commissioner of Customs
(Group-5), Office of the Commissioner of
Customs, Chennai-II, Custom House,
No. 60, Rajaji Salai, Chennai- 600 001. ...
Respondent

Prayer: Petition filed under Article 226 of the
Constitution of India to issue a Writ of Certiorari,
calling for the records of the respondent, leading to
issuance of Order-in-Original No. 57881/2017, dated
24.08.2017, in F.No.S.Misc.387/2017-Gr.5 and

quash the same for being contrary to the statutory provisions and also being without jurisdiction.

For Petitioner : Dr. S. Krishnanadh

For Respondent : Mr. A.P. Srinivas

O R D E R

1. Heard Dr.S.Krishnanadh, learned counsel for the petitioner and Mr. A.P. Srinivas, learned Senior standing counsel for the respondent.

2. The petitioner has challenged an Order-in-Original, dated 24.08.2017, issued under Section 17(5) of the Customs Act, 1962. By the impugned order, the respondent has denied the petitioner's claim for the benefit of a notification with respect to description of the goods under serial No. 196 of Schedule II of notification 1/2017-integrated Tax (Rate), dated 28.06.2017, (as amended) at 12% and accordingly, ordered that the correct serial number to be claimed for IGST is serial number 453 Schedule III of the notification at 18%. Accordingly, the respondent ordered re-assessment of the bill of entry No. 544081, dated 21.07.2017. As against the impugned order, the petitioner has an alternate remedy of filing an appeal before the Commissioner of Customs (Appeals), Chennai, under Section 128(1) of the Customs Act, 1962. The petitioner has not availed such remedy and is before this Court challenging the impugned order.

3. Thus, the first hurdle, the petitioner has to across is to convince this Court that despite the existence of an alternate remedy, the petitioner is entitled to challenge the impugned order by way of this Writ Petition.

4. The first contention raised by the petitioner is that the impugned order is wholly without jurisdiction inasmuch as adjudication under the provision of the Central Goods and Service Tax Act, 2017, (CGST Act) read with Integrated Goods and Service Tax Act, 2017, (IGST Act), is to be done by a proper officer in terms of Section 2(91) of the CGST Act, or an adjudicating authority as defined under Section 2(4) of the CGST Act. That the respondent is neither a proper officer nor an adjudicating authority as defined and contemplated under the CGST Act or the IGST Act. It is submitted that the bill of entry, dated 21.07.2017, was assessed on self assessment basis under Section 59 of the CGST Act and redetermination of such a bill of entry can be done only in the manner prescribed under Section 73 of the CGST Act, which provides for issuance of notice and notice having not been issued to the petitioner, the entire action initiated by the respondent is without jurisdiction. The CGST Act read with IGST Act provide for filing appeals before the appellate authority prescribed under the Act and such authorities are yet to be notified and therefore, the petitioner are left with no alternate remedy except for filing this Writ Petition. Apart from the submissions, with regard to the maintainability of the Writ Petition, the petitioner has raised several other grounds with regard to the classification of the goods, which was elaborately reiterated by Dr.Krishnanadh.

5. In my considered view, a Writ Court cannot make a fact finding exercise to ascertain, which would be an appropriate entry under which the goods are to be classified. Infact, under the normal course in respect of classification disputes, the High Court cannot entertain an appeal against an order passed by the CESTAT as appeal lies to the Hon'ble Supreme Court

in respect of classification issues or matters concerning rate of tax.

6. The impugned order is on request made by the petitioner to furnish a speaking order under Section 17(5) of the Customs Act, 1962. A cursory reading of the impugned order would clearly show that the petitioner submitted themselves to the jurisdiction of the respondent in appearing before the respondent and requesting for an order with reasons. In such circumstances, it has to be seen as to whether the plea of lack of jurisdiction now raised by the petitioner is sustainable. The respondent on a request made by the petitioner vide their letter, dated 27.07.2017, to pass a speaking order afforded them an opportunity of personal hearing on 16.08.2017. The proprietor of the petitioner attended the hearing and contested the classification adopted by the department for the imported goods, which are tiller blades. It appears that the petitioner did not dispute the classification as under entry 84329010, but submitted that the correct rate of IGST should be at 12%. The respondent has taken a decision by classifying the goods by fixing the rate of tax at 18% and in support of such conclusion has given certain reasons. Exercising jurisdiction under Article 226, I do not propose to venture into as what would be the appropriate classification of the goods as this exercise being a factual exercise has to be necessarily agitated before the appellate authority. Needless to state that in the appeal petition, the petitioner is entitled to canvass all points including the ground of lack of jurisdiction which is sought to be canvassed before this Court for the first time.

7. For the above reasons, the Writ Petition is dismissed as not maintainable, leaving it open to the

petitioner to file an appeal before the appellate authority and in the event of the appeal being filed, the appellate authority, while computing limitation shall exclude the period from 20.09.2017 till the date of receipt of the certified copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

05.10.2017

Index:Yes/No

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Note: Registry is directed to return the original impugned order after substituting the same with the certified copy.

To

1.The Joint Commissioner (Commercial Taxes)
Chennai (East) Division,
No.1, Greams Road, Chennai- 600 006.

2.The Commercial Tax Officer,
Air, Cargo, Vehicle Check Point,
Chennai (2) International Air Old,
Airport Buildings, Meenambakkam,
Chennai- 600 027.

T.S.SIVAGNANAM, J.

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