IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **24.02.2023**

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THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

W.P.No.30494 of 2022
and
W.M.P.No.29929 of 2022

M/s.Flower Garden,
Represented by its Proprietor,
Shri. L.M.Mohamed Mohideen,
212 BK Street,
Coimbatore - 641 001. ... Petitioner

Vs.

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

2.The Assistant Commissioner of Customs,
Group II,
Custom House,
60 Rajaji Salai,
Chennai - 600 001. ... Respondents

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the order dated 01.11.2022 in

F.No.CUS/APR/S49/412/2022-Gr3 and quash the same and further direct the 1st respondent to finally assess and clear the goods imported by the petitioner vide bill of entry No.9580306 dated 16.07.2022 without levying anti-dumping duty in terms of Notification No.14/2022-Cus (ADD) dated 20.05.2022.

For Petitioner : Mr.Hari Radhakrishnan

For Respondents : Mr.S.Gurumoorthy
Senior Standing Counsel

ORDER

The Petitioner has challenged the impugned order dated 01.11.2022, under which the request for re-testing made by the petitioner in respect of the imported goods was rejected by the respondents.

2. The petitioner had imported lining materials from China. If the lining materials contain Polyurethrene, the petitioner is liable to pay Anti-Dumping Duty. However, according to the petitioner, the lining material does not contain Polyurethrene and it contains only Polyethelene and therefore, they are not liable to pay Anti-Dumping Duty. Before the respondents, the petitioner had produced a laboratory report based on samples of the imported goods, which reveals that the lining material

imported by the petitioner does not contain Polyurethrene.

3. The petitioner relied upon the said report before the respondents and claimed exemption from payment of Anti-Dumping Duty. The respondents, on the other hand, relies on a laboratory report based on the samples collected from the imported goods which discloses that the lining materials imported by the petitioner contains Polyurethrene and therefore, based on the said report, the respondents have levied Anti-Dumping Duty on the petitioner.

4. The respondents have also contended that their test report precedes the test report produced by the petitioner. Based on the test report of the respondents, the imported goods of the petitioner were levied with Anti-Dumping Duty by the respondents. Aggrieved by the same, the petitioner has filed this Writ Petition.

5. The petitioner has raised several grounds for challenging the impugned order. They would contend that the procedure prescribed under the circular dated 18.07.2017 of the respondents has not been followed.

6. Learned counsel for the petitioner would now submit on instructions that if the samples of the imported goods of the petitioner are tested once again by an independent laboratory, truth will come out and it will be found that the imported goods does not contain Polyurethrene and therefore, Anti-Dumping Duty cannot be levied on the said imported goods.

7. Learned counsel for the petitioner also would submit on instructions that any independent laboratory can be appointed by the respondents and the cost for the same shall also be borne by the petitioner.

8. After recording the submissions made by the learned counsel for the petitioner, this Court is of the considered view that no prejudice would be caused to any of the parties if the test with regard to the imported goods of the petitioner viz., lining materials is conducted once again by a reputed laboratory engaged by the respondents to find out whether the imported goods contain Polyurethrene or not and the cost for the same will have to be necessarily borne by the petitioner.

9. For the foregoing reasons, the impugned order dated 01.11.2022 passed by the respondents is hereby quashed and the matter is remanded back to the respondents for fresh consideration with regard to the issue as to whether the imported goods of the petitioner under the Bill of Entry dated 16.07.2022 contains Polyurethrene or not with the following directions:

a) The respondents shall appoint a reputed laboratory of their choice for the purpose of testing the samples of the imported goods of the petitioner under the aforementioned Bill of Entry within a period of four weeks from the date of receipt of a copy of this order and obtain the report from the said laboratory and based on the laboratory report, the respondents shall decide as to whether the petitioner is liable to pay Anti-Dumping Duty or not and communicate the same to the petitioner within a period of one week from the date of receipt of the laboratory report;

b) The petitioner shall bear the cost of the respondents in engaging the laboratory and the respondents shall intimate the cost to the petitioner who shall pay the same on such intimation.

10. No Costs. Consequently, the connected Writ Miscellaneous Petition is closed.

24.02.2023

Index : Yes/No
Speaking Order : Yes / No
Neutral Citation Case: Yes / No
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To

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Group III, Chennai - II,
Custom House,
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Chennai - 600 001.

2.The Assistant Commissioner of Customs,
Group II,
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ABDUL QUDDHOSE. J.,

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24.02.2023
(1/2)