CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT NO. III

Customs Miscellaneous Application No.40644 of 2019 &
Customs Appeal No.41704 of 2019
(Arising out of order F.No.CAU/SIIB/CHE/07/2018-CH III dt. 30.10.2010 passed by Principal Commissioner of Customs, Chennai]

M/s.Technology Frontiers (India) Pvt. Ltd. **Appellant**
Having its registered office at Plot No.38,
Developed Plot Industrial Estate,
Perungudi,
Chennai 600 096.
Rep. by its Managing Director
Mr. M.S. Muralidharan

VERSUS

Principal Commissioner of Customs,
Chennai-III Customs House,
No.60,Rajaji Salai,
Chennai 600 001. **Respondent**

APPEARANCE :

Shri C.V. Niranjan, Advocate
For the Appellant

Shri S.Balakumar, AC (AR)
For the Respondent

CORAM :

HON'BLE MS. SULEKHA BEEVI. C.S., MEMBER (JUDICIAL)

DATE OF HEARING : 20.01.2020
DATE OF DECISION : 20.01.2020

FINAL ORDER No._40076/2020__

The brief facts of the case are that the appellants imported certain goods and classified them as LED Display Panels. The department was of the view that the said goods are LED Monitors and proposed classification under 85285900. The appellants filed representation dt. 16.07.2018 requesting to send the goods for testing by expert and put forward four references to be considered by the expert. The department however was of the view that goods need to be analysed only whether they fall under classification 85285900 only. As per the SCN dt.27.02.2015 and 10.08.2015, the reference put forward by the department for sending the samples to the expert is as under :

> "Whether the LED Display systems imported vide Bills of Entry should be classified under CTH 85285900"

The appellant replied to the SCN putting forward competing classifications for the goods and wanted the expert to look into three other references also which are as under :

(i) Are indicator panels incorporation Liquid Crystal Decides (LCD) or Light emitting Diodes (LED) to be classified under CTH 85312000

(ii) Are illuminated signs, illuminated name-plates and the like to be classified under CTH 9405 6090

(iii) Are monitors and projectors not incorporating television reception apparatus, reception apparatus for television, whether or not incorporation radio broadcast receivers or sound or video recording or reproducing apparatus, to be classified under CTH 8528 5900

(iv) Are electronic integrated circuit to be classified under CTH 8542 as per the CESTAT judgment.

Thus the appellant wanted three other references including the reference put forward by the department to be looked into and analysed by the expert. However, the department was not inclined to allow the three references put ward by the appellants. Against such view taken by the department, the appellant has filed the above appeal along with stay application.

2. When the matter came up for hearing on 11.12.2019, an interim direction was given to the department to file counter to the stay application. Accordingly, the matter has been posted today for hearing on the counter of the department on the application for stay. The order passed by this Bench on 11.12.2019 was to the effect that the department shall furnish details as to what is the prejudice caused to the department if the entire four references as requested by the appellant is put to analysis by the expert.

3. Today when the matter came up for hearing, the Ld.A.R Shri S. Balakumar submitted that the department has filed counter explaining the set of facts. It is submitted by him that department has no objection to consider the references put forward by the appellant in their application dt. 16.07.2018. On perusal of the counter filed by the department, it is seen that the main ground of resistance by department is that the adjudicating authority cannot go beyond the SCN and therefore only the allegation in SCN can be send for expert opinion. It is needless to say that in an

adjudication the point of decision has to be confined to the allegation in the SCN. However, this has to be done after considering the defence put ward by the appellant in the reply filed by them. In the present case, the appellant pleads in their reply to SCN that they require to consider various other classifications also and subject the products to expert analysis in order to establish their case. The department has declined the said request vide letter dt. 30.10.2019 for which reason the above matter has come up before the Tribunal. After considering the submissions and in continuance of the order passed on 11.12.2019, I am of the view that no grounds have been put ward before me to show that any prejudice would be caused to the department in allowing the request of the appellant to analyse the products by an expert on all four references.

4. The other ground raised in the counter filed by department, is that the matter has been pending for almost six years and the appellant is trying to protract the proceedings. It is explained by the learned counsel appearing for the appellant that initially the show cause notice was issued to them on 10.08.2015 for which the appellant replied on 15.10.2015. Yet another SCN dated 27.02.2015 on the same issue dated 27.02.2015 was send to the appellant upon which the appellant requested for common adjudication. The department took two years to pass an order directing for common adjudication. Appellant then filed application

dt. 16.07.2018 requesting for expert opinion on all the four references. But the decision on such application was taken by the department only on 30.10.2019. In the meanwhile, the appellant has made several communications reminding the department of the need to send the sample for expert opinion on all four references. It is made out that there was no wilful act on the part of the appellant to delay the proceedings. The counter filed by the department in this regard does not find favour with me.

5. Taking into consideration the facts and records which are produced before me as well as the submissions by the Ld. A.R , that the department is willing to send all the four references for analysis to an expert, I direct the adjudicating authority to allow the request of the appellant and send all of the four references as given in the application dt. 16.07.2018 filed by the appellant to the expert for his opinion. The appeal is allowed on the above directions. As the appeal itself is decided the stay application requesting for stay of adjudication proceedings have become infructuous and is disposed accordingly.

(Order dictated and pronounced in court)

(Sulekha Beevi C.S.)
Member (Judicial)

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