

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2015

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.8090 of 2015

M/s.BMW India Private Limited,
having its office at No.36,
1st Cross Road, 1st Main Road,
Off 2nd Avenue, Mahindra Wold City,
Chengalpet Post, Kancheepuram - 603002.
Rep. By Mr.Venkatraman Chandrasekar

... Petitioner

Vs.

1.Commissioner of Customs,
Seaport; (Imports),
Customs House,
No.60, Rajaji Salai,
Chennai - 600 001.

2.Union of India,
Rep. By the Deputy Commissioner of Customs,
Group - 5B, Customs House,
No.60, Rajaji Salai,
Chennai - 600 001.

3.M/s.Citibank N.A.,
Acting through its branch,
No.163, Anna Salai,
Chennai - 600 002.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue writ of prohibition prohibiting the office of the respondents 1 and 2, their men, servants and agents from enforcing, en-cashing or appropriating in any manner whatsoever the monies in relation to the bank guarantees bearing No.5556600650, dated 10.04.2013 for Rs.6,92,00,000/- and Bank Guarantee No.5556600652, dated 15.04.2013 for Rs.1,28,00,000/- issued by the third respondent on behalf of the petitioner pursuant to the Order-in-Original bearing No.35113/2015, dated 13.02.2015 passed by the first respondent and letter bearing F.No.S49/95/2013-GR.5B, dated 19.03.2015 issued by the second respondent and pass such further orders.

For Petitioner :Mr.Karthick Sundaram
For R1 & R2 :Mr.V.Sundareswaran

For R3 : No Appearance

ORDER

The present writ petition is directed against the impugned order dated 13.02.2015 passed by the first respondent / the Commissioner of Customs, Chennai, which, inter alia, ordered for the enforcement of the Bank Guarantees of Rs.8,19,04,067/- furnished by the petitioner against the differential duty.

2. It is the claim of the petitioner that the petitioner has furnished the Bank Guarantees only with regard to the differential duty, therefore, the Appellate Authority can decide the matter, only on filing of appeal by him within the time stipulated. Till then, the respondent cannot be allowed to en-cash the Bank Guarantees. It is further stated that the petitioner had already taken steps to challenge the correctness of the Order-in-Original, therefore, the respondent shall not be allowed to proceed further before the appeal to be filed by him.

3. Learned counsel appearing for the respondents stated that although the petitioner is entitled to file an appeal till 20.05.2015, after expiry of the said period, it is open for the respondents to proceed against the petitioner in respect of fine amount.

4. Admittedly, the petitioner can file an appeal before the Appellate Authority till 20.05.2015 against the Order-in-Original No.35113/2015, dated 13.02.2015 passed by the first respondent. In such view of the matter, the respondents are restrained from proceeding further with regard to en-cashment of Bank Guarantees till the disposal of the appeal yet to be filed by the petitioner, before the expiry of appeal time. Needless mention that the petitioner shall prefer an appeal before 20.05.2015, as admittedly the limitation period ends on the said date, as submitted by the counsel appearing on either side.

5. With the above direction, the writ petition stands disposed of. No Costs. M.P.No.1 of 2015 is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

rkm

To

1.Commissioner of Customs,
Seaport; (Imports),
Customs House,
No.60, Rajaji Salai,
Chennai - 600 001.

2.The Deputy Commissioner of Customs,
Group - 5B, Customs House,
No.60, Rajaji Salai,
Chennai - 600 001.

3.M/s.Citibank N.A.,
Acting through its branch,
No.163, Anna Salai,
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1 cc to Mr. V.Sundareswaran,Advocate, SR.No.24002

1 cc to M/s.Karthick Sundaram ,Advocate, SR.No.23148

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ppa (co)
pmk.11.5.2015



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