THE HON'BLE SRI JUSTICE DILIP B. BHOSALE
AND
THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.26152 of 2012

ORDER: (Per Hon'ble Sri Justice Dilip B. Bhosale)

Heard Sri E.Manohar, learned Senior Counsel for the petitioner and Sri V.Gopala Krishna Gokhaley, learned Counsel for respondent Nos.4 and 5. None appears for respondent Nos.1 to 3, though served.

The petitioner in the instant Writ Petition under Article 226 of the Constitution of India, seeks the following relief.

> "For the reasons stated in the accompanying affidavit, the petitioner herein prays that this Hon'ble Court may be pleased to issue a Writ, in the nature of Writ of Mandamus, or any other appropriate Writ, direction or order declaring the action of the Assistant Commissioner of Customs and Central Excise, ICD/CFS, Sanathnagar, Hyderabad, the 5th respondent herein, in not releasing as nil duty the goods viz., the three Aircrafts covered under Bill of Entry No.7227994 dated 27.06.2012 imported by the petitioner as per the No Objection Certificate dated 07.06.2011 issued by the Director General of Civil Aviation, the 2nd respondent herein and permissions dated 30.11.2011 granted by the Ministry of Civil Aviation, Government of India, the 1st respondent herein, 19.03.2012 by the 2nd respondent herein and 30.04.2012 of the Director General of Foreign Trade, Government of India, the 3rd respondent herein, as illegal and void and direct the 5th respondent to release the goods as nil duty forthwith to the petitioner; and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case."

This Court on 27.08.2012, while issuing rule on W.P.M.P.No.33315 of 2012, passed the following order.

> "Petitioner is a company registered under the Companies Act, 1956 and is incorporated for setting up Flying-Training Academy at Rajiv Gandhi International Airport, Shamshabad. Accepting the request of the petitioner, in principle, no-objection certificate is issued by the 2nd respondent to set up Flying-Training Academy. The 1st respondent, through Civil Aviation Ministry, also granted permission to import three aircrafts.

> It is the case of the petitioner that it has secured three aircrafts from Malaysia on lease and they are imported for the purpose of the Academy. In view of the notification, dated 17.03.2012, issued vide proceedings No.12/2012-Customs, by the Department of Revenue, Ministry of Finance, goods/aircrafts which are imported for the purpose of Flying-Training Academy are totally exempted from customs duty. A copy of the said notification is placed on record.
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> Whether the petitioner is entitled for exemption of customs duty is a matter which is required to be considered by the respondents.
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> Inasmuch as it is stated in the affidavit filed in support of the writ petition that the goods/aircrafts are already arrived and presently petitioner is paying demurrage charges in view of expiry of permitted period and having regard to the notification referred above, respondents are directed to release all the goods, i.e. three aircrafts covered by Bill of Entry No.7227994, dated 27.06.2012 on the petitioner furnishing bank guarantee from a Nationalised Bank for the entire amount of customs duty, which is ordinarily leviable on such goods as per the tariff notification in force. Petitioner shall keep the bank guarantee in force till further orders of this court.
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> Post after three weeks."

Sri E.Manohar, learned Senior Counsel for the petitioner, submits that in view of the above order dated 27.08.2012, the petitioner has furnished a bank guarantee of the Nationalized Bank for the entire amount of customs duty, and in view thereof, all the three aircrafts, covered by Bill of Entry No.7227994, dated 27.06.2012, have been released.

During the pendency of the Writ Petition, respondent No.5 issued a show cause notice for finalization of provisional assessment under Section 18 of the Customs Act, 1962, dated 21.09.2012. The petitioner, instead of replying and contesting the show cause notice, filed W.P.M.P.No.39628 of 2012 and prayed for stay of further proceedings initiated pursuant to the show cause notice dated 21.09.2012, pending the hearing and disposal of the Writ Petition. This Court, vide order dated 09.10.2012, granted interim stay, pending further orders. As a result thereof, further proceedings initiated by issuing show cause notice dated 21.09.2012 remained stayed/did not proceed further. The respondents, therefore, filed a petition for vacating the interim order, dated 09.10.2012.

In this backdrop, in the course of hearing, we made certain suggestions and also expressed the order that could be passed for disposal of the Writ Petition and also pending Miscellaneous Petitions therein. Learned Counsel appearing for the parties have fairly agreed for the order that we propose to pass. Hence, we dispose of the Writ Petition and pending Miscellaneous Petitions by the following order.

i) The petitioner shall keep the bank guarantee furnished by them in pursuance of the order passed by this Court dated 27.08.2012 in W.P.M.P.No.33315 of 2012 alive/in force till the show cause notice dated 21.09.2012 is decided finally and for a further period of one month from the date of decision.

ii) It is open to the petitioner to file their reply to the show cause notice along with supporting documents within a period of three weeks from today.

iii) Respondent No.5 shall take the reply that will be filed by the petitioner to the show cause notice on record and follow the due procedure, including affording an opportunity of being heard to the petitioner, if they so desire and request, and decide the show cause notice as expeditiously as possible, preferably within a period of twelve weeks from the date of filing of the reply or from the expiry of the three weeks stipulated by this order for filing reply, whichever is earlier.

iv) It is open to the petitioner to raise all contentions including that they are not liable to pay any duty based on the notification No.12/2012-Customs, dated 17.03.2012, and letter dated 07.06.2011 of the Deputy Director General of Civil Aviation. It is also open to the petitioner to place any other material that they desire to rely upon along with their reply to the show cause notice.

v) We hope and trust that respondent No.5 shall decide the show cause notice on merits in accordance with law within the stipulated time.

With these observations, the Writ Petition as well as

W.P.M.P.No.39628 of 2012 stand disposed of. If there are any other Miscellaneous Petitions pending, the same also stand disposed of by this order. There shall be no order as to costs.

(DILIP B. BHOSALE, J)

(A.RAMALINGESWARA RAO, J)

10.03.2015
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