

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 29.07.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.31180 of 2015

M/s RSR India Mercantile Ltd.,
rep. by its Managing Director
Mr.Y.Rajesekhara Reddy
Chennai 600 007.

... PETITIONER

Vs

The Deputy Commissioner of Central Excise
Chennai V Division, Chennai II Commissionerate
692, MHU Complex, Anna Salai,
Nandanam, Chennai 600 035.

... RESPONDENT

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for issuance of a Writ Of Mandamus to direct the respondent to implement the Order-in-Appeal NO.13/2013 (M-II) dated 20.03.2013, by issuing Registration Certificate to the Petitioner Company under Rule 9 of the Central Excise Rules, 2002 and Rule 3 of the Customs (Import of Goods at Concessional rate of duty for the manufacture of excisable goods) Rules, 1996, within a reasonable time frame.

For Petitioner : Mr.G.Derrick Sam

For Respondent : Mr.A.P.Srinivas
Senior Panel Counsel

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O R D E R

Heard Mr.G.Derrick Sam, learned counsel for the petitioner and Mr.A.P.Srinivas, learned Senior Panel Counsel for the respondent. With the consent of the learned counsel appearing on either side, the Writ Petition itself is taken up for final disposal.

2.The petitioner-Company, in this Writ Petition seeks for issuance of a writ of mandamus to implement the order passed by the Commissioner of Appeals in Order-in-Appeal No.13 of 2013 and for issuance of Registration Certificate to them,

under Rule 9 of the Central Excise Rules 2002 and Rule 3 of the Customs (Import of Goods at Concessional rate of duty for the manufacture of excisable goods) Rules, 1996.

3.The case has a checkered history. The Application filed by the petitioner was rejected by the respondent by an order dated 07.02.2013. The petitioner preferred an Appeal to the Commissioner of Appeals, who by an order dated 20.03.2013, allowed the said Appeal. The order passed by the Commissioner (Appeals) having not been implemented, the petitioner preferred a Writ Petition in W.P.No.15325 of 2013, to implement the order in Appeal, by issuing a Registration Certificate. The Writ Petition was allowed by an order dated 25.06.2013, recording the instructions given by the learned Standing Counsel appearing for the respondent-Department. Aggrieved by the said order, the Department preferred a Writ Appeal before the Hon'ble Division Bench of this Court in W.A.No.1511 of 2013, which was disposed of by Judgment dated 06.08.2013, giving liberty to the Department to prefer a Review. The ground on which the Appeal was preferred was by contending that the Department did not give any instructions to the learned Standing Counsel to concede to the prayer sought for by the petitioner. Thereafter, the Department preferred a Review Application before the Writ Court, in Rev.Applin.No.185 of 2013, by then since Contempt Petition filed by the petitioner in Cont.P.No.1612 of 2013, was also pending, both the matters have been heard together and by a common order dated 01.04.2014, the order passed in Writ Petition was recalled and the Contempt Petition was closed.

4.When the Writ Petition came up for hearing, the Appeal filed by the Department before the CESTAT as against the order of the Commissioner (Appeals) dated 20.03.2013 was pending and the stay petition was also pending. Therefore, the petitioner withdrew the Writ Petition and same was accordingly, dismissed as withdrawn on 28.11.2014.

5.Now, the present attempt of the petitioner is, for the very same relief, but on the ground that the Stay Petition filed by the Department in their Appeal has been rejected by the CESTAT, by an order dated 20.04.2015.

6.After hearing the learned counsel for the petitioner, I have carefully perused the order passed by the CESTAT In the said Order, I find that the CESTAT, has not recorded even prima facie finding in favour of the petitioner. The Department's stand is that the Registration Certificate cannot be granted as there is an embargo in terms of Notification No.32/1997-Cus dated 01.04.1997. The Tribunal has not examined the effect of the Notification while closing the interim Applications. All that it has done is recorded the submissions. Therefore, this Court is not inclined to issue

any direction at this juncture by way of writ of mandamus, as sought for.

7.Hence, the Writ Petition stands closed. However, the petitioner is at liberty to move the Tribunal for appropriate interim relief, pending disposal of the matter before it, if so advised. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

rpa

To

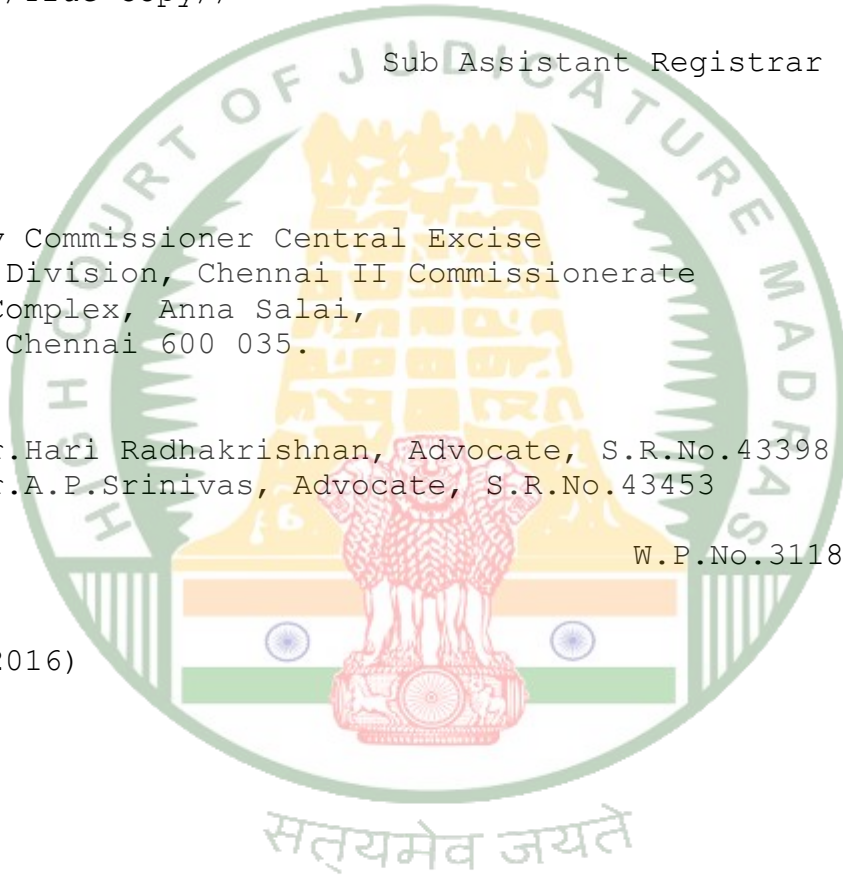
The Deputy Commissioner Central Excise
Chennai V Division, Chennai II Commissionerate
692, MHU Complex, Anna Salai,
Nandanam, Chennai 600 035.

+1cc to Mr.Hari Radhakrishnan, Advocate, S.R.No.43398

+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.43453

W.P.No.31180 of 2015

GR(CO)
CA(18/08/2016)



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