

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.09.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.34599 of 2015 &
W.M.P.No.1 of 2015

M/s. Green India Enterprises,
No.24-2-1477-A, Old Military Colony,
Dargamitta, Nellore,
Andhra Pradesh -524 004.
rep. by its authorized signatory
Shri.K.Jagadeesh .. Petitioner
Versus

1. The Commissioner of Customs,
Chennai II Commissionerate,
Custom House,
No.60, Rajaji Salai,
Chennai - 600 001.
2. The Assistant / Deputy Commissioner of
Customs (Group-5),
Custom House,
No.60, Rajaji Salai,
Chennai - 600 001. .. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, seeking for a Writ of mandamus to direct the Respondents herein to release the goods covered under Bills of Entry No.8621647, dated 17.03.2015 in terms of the order of Commissioner (Appeals-II), Chennai, vide Order in Appeal in C.Cus-II No.588/2015, dated 30.06.2015.

For Petitioner : Mr.N.Balaji

For Respondent : Mr.B.Rabu Manohar, SCGSC.

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O R D E R

Heard Mr.N.Balaji, learned counsel appearing for the petitioner-Company and Mr.B.Rabu Manohar, learned Senior Central Government Standing Counsel appearing for the respondents. By consent of the learned Counsel appearing for both sides, the Writ Petition itself is taken up for final disposal.

2) The petitioner seeks for issuance of Writ of Mandamus to direct the respondents to release the goods covered under Bill of Entry No.8621647, dated 17.03.2015, in terms of the order passed by the Commissioner of Customs (Appeals-II), Chennai, in C.Cus-II No.588/2015, dated 30.06.2015.

3) The petitioner filed self-assessed Bill of Entry for the clearance of the goods declared as "Bird Scare Device" stating that it is used for agriculture purpose only and classified the same under Customs Tariff Heading (CTH) 84362900. The Department did not accept the classification and observed that, based on the functionality and nature of the imported goods, it is classified as CTH 9304 and it is restricted for import. Further, it was observed that the goods could create noise pollution and the Environment Protection Act forbids the import and thus, holding that the goods face double restriction under the Arms Act and Environment Protection Act.

4) The entire goods were confiscated absolutely as per the Order-in-Original, dated 19.06.2015, against which, the petitioner preferred appeal before the Commissioner of Customs (Appeals-II), Chennai. The Commissioner, after consideration of the entire case, held that the correct classification of the goods is not CTH 84362900 and set aside the order of absolute confiscation.

5) Now, the issue is, as to whether the goods in question would come under the ambit of "Arms and Ammunition". In this regard, the learned Standing Counsel appearing for the respondents, was directed to get instructions in the matter. Accordingly, the second respondent has mailed the following written instructions:

".....Please refer to the above mentioned subject and Hon'ble High Court's observation whether any testing has been done.

In this regard, it is informed that the matter has been taken up with Deputy Director ballistic division, Forensic Science Department, Chennai. As per discussion then can give opinion whether the imported goods are covered under Arms and Ammunition only on the inspection of the goods and connected literature. Sending the sample to forensic department and to get the report may take at least two weeks time. For this the importer has to make arrangement for taking the goods to the Forensic Department under the supervision of Customs Department.

Hence, it is requested to seek adjournment of the case with the direction to the party to

co-operate in the process of forwarding the samples to the Forensic Department....."

6) Thus, in terms of the above, the Department is willing to undertake an exercise of getting the goods examined by the Forensic Department and seek co-operation of the petitioner.

7) The learned counsel for the petitioner, on instructions, submitted that the petitioner would furnish the required information to the Department. The second respondent is directed to issue notice to the petitioner to appear in person and give appropriate instructions, so that the samples could be drawn for being sent to the Deputy Director Ballistic Division, Forensic Science Department, Chennai, for testing and submitting report. Based on the report submitted by the Forensic Science Department, the second respondent shall pass appropriate orders within a period of three weeks from the date of receipt of the report.

With the above observations and directions, the Writ Petition is disposed of. No Costs. Consequently, connected W.M.P. is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

pvs

To

1. The Commissioner of Customs,
Chennai II Commissionerate,
Custom House,
No.60, Rajaji Salai,
Chennai - 600 001.

2. The Assistant / Deputy Commissioner of
Customs (Group-5),
Custom House,
No.60, Rajaji Salai,
Chennai - 600 001.

+1cc to Mr.B. Rabu Manohar, Advocate, S.R.No.50083

MG(CO)
EU(27/09/2016)

W.P.No.34599 of 2015 &
W.M.P.No.1 of 2015