IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.09.2016

CORAM:

THE HON 'BLE MR. JUSTICE T.S.SIVAGNANAM

Writ Petition No.29607 of 2016

Nagoorkani Jeenathmisha ... Petitioner

Versus

The Assistant Commissioner of Customs,
Air Admin, Ware House,
Air Customs, Airport,
Anna International Terminal,
Chennai International Airport,
Tirusoolam, Chennai ... Respondent

Prayer:- Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Mandamus to direct the respondent to release the goods detained in O.S.No.1172 of 2014 AIU, by implementing and give effect to the Order-in-Original, (O-in-O), viz., No.138/2015-16 Airport, dated 18.06.2015, within a reasonable time frame.

For Petitioner : Mr. A.Ganesh

For Respondent : Mr. G.M.Syed Nurullah Sheriff, SPC.,

O R D E R

Heard Mr.A.Ganesh, learned counsel appearing for the petitioner and Mr.G.M.Syed Nurullah Sheriff, learned Senior Panel Counsel, appearing for the respondents. By consent of the learned counsel for both sides, the writ petition is taken up for final disposal.

2. The petitioner seeks for the issuance of a writ of mandamus, to implement the order passed by the Appellate Authority in the Order-in-Original, (O-in-O), viz., No.138/2015-16 Airport, dated 18.06.2015. The Appellate Authority, while allowing the appeal filed by the petitioner as against the Order-in-Original in O.S.No.1172 of 2014 AIU, dated 18.06.2015, heard the appeal filed by the Department as well and dismissed the appeal filed by the Department, as devoid of merits, and allowed the petitioner's appeal. Though the order was passed on

30.10.2015, the respondent did not implement the order and therefore, the petitioner is before this Court by way of this writ petition.

3. Earlier, when this matter was called on 26.08.2016, the matter was adjourned to enable the learned Senior Panel Counsel to get the instructions from the Department.

4. Today, on instructions, the learned Senior Panel Counsel submitted that, a revision has been filed as against the said order before the Joint Commissioner and since the revision is pending, the Department is unable to implement the order passed by the Commissioner (Appeals).

5. Admittedly, there is no interim order granted by the Revisional Authority, as against the order passed by the Commissioner (Appeals). Therefore, the mere pendency of the revision will not amount to stay of the order passed in the appeal. It is worthwhile to mention, at this juncture, that the Hon'ble Division Bench of the Punjab and Haryana High Court, in the case of NVR Forgings v. Union of India, reported in 2016 (335) E.L.T. 679 (P&H), considered the question as to whether the Joint Secretary (Revisional Authority) is competent to entertain a revision, against the order passed by the Appellate Authority, who is in the rank of the Commissioner of Customs and held that the impugned order therein passed by the Joint Secretary to the Government, who was also the Commissioner of Central Excise and Customs, and the order in the appeal as well as the Revisionary order has been passed by the Officers of the same rank, it would not be permissible in law to do so.

6. This decision, if applied to the facts of the present case, then, it has to be held that the Revisional Authority has no jurisdiction to entertain the Revision Petition, against an order passed by the Officer, who is in the same cadre. In any event, the order passed by the Appellate Authority, having been nearly one year back, this Court is of the view that one more opportunity can be granted to the Department to pursue the revisional remedy and if they are unable to obtain any orders, either interim or final, then, they have to comply with the Order-in-Appeal.

7. Accordingly, this writ petition is disposed of, granting four weeks time to the respondent / Department from the date of receipt of the copy of this order, to obtain appropriate interim or final orders from the Revisional Authority, failing which, the orders passed by the Commissioner of Appeals, dated 30.10.2015, shall be implemented within a period of ten days from the date on which the thirty days' period expires. No costs.

***"To secure the interest of Revenue, in the event they succeeded in the revision petition, there will be a direction to the petitioner to furnish a bond for the full value to the satisfaction of the respondent and keep the bond alive till the revision petition is heard and disposed of by the Revisional authority."**

-s/d-
Assistant Registrar(CS CCC)
daTED: 6.9.2016

*Incorporated as per order
dated 7.10.2016
made in in W.P.No.29607/16

Sd/
Assistant Registrar
Dated: 2.11.2016

True Copy

Sub-Assistant Registrar

To
The Assistant Commissioner of Customs,
Air Admin, Ware House,
Air Customs, Airport,
Anna International Terminal,
Chennai International Airport,
Tirusoolam, Chennai

To be substituted to the order already despatched on 7.9.2016

+1 cc to Mr.A.Ganesh Advocate sr 49788

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