IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 17.11.2016

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THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

W.P.No.37666 of 2016

M/s.The Rainco India
Rep. by its Partner
Shri.Syed Md Aminuddin,
H Block No.62, Second Floor,
Phase I, 4th Street, Anna Nagar East,
Chennai-600 102. .. Petitioner

Vs.

1.The Deputy Commissioner of Customs (Group-II),
Chennai II Commissionerate, Customs House,
60, Rajaji Salai,
Chennai-600 001.

2.The Directorate of Revenue Intelligence,
Zonal Unit, Adarsh Towers,
27, GN Chetty Road,
T.Nagar, Chennai-600 017. .. Respondents

PRAYER : Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to F.No.S.Misc.1628/2016/Gr.2 dated 21.10.2016 passed by the first respondent and quash the same as illegal violative and against the direction given by this Court in W.P.No.29257 of 2016 dated 20.09.2016 and directing the respondents to release the goods covered under the Bill of Entry No.5569500 dated 09.06.2016- Axe Oil-5 different containers (bottle) 3ml, 5ml, 10ml, 28ml, 56ml - imported from Singapore in a time bound period.

For Petitioner : Mr.G.Derricksom
FOR M/s. K.G. Ragunath

For Respondents : Mr.V.Sundareswaran
Senior Panel Counsel

O R D E R

Heard the submission of Mr.G.Derriksom, learned counsel for the petitioner and Mr.V.Sundareswaran, learned Senior Panel Counsel for the respondents.

2. The petitioner is before this Court for the second time seeking for the release of the goods covered under the Bill of Entry No.5569500 dated 09.06.2016 - Axe Oil - 5 different container (bottle) 3ml, 5ml, 10ml, 28ml and 56 ml imported from Singapore. The matter was vehemently contested before this Court by the Revenue and they filed a counter affidavit. The Court, taking into consideration the submission made on either side, vide order dated 20.09.2016, issued an interim direction and the operative portion of the order reads as follows:

> "3.Though it appears that the petitioner has imported the other oils, the prayer sought for in the Writ Petition is confined only to Axe Oil. The petitioner's contention is that in respect of smaller quantities, the MRP declaration is not required to be made. For the higher quantities, the petitioner's request is that provisional release may be considered by the respondent. The second respondent has filed an elaborate counter affidavit and what would be relevant to note is that the petitioner is not cooperating in the adjudication. However, there is a counter allegation made against the Department saying that in spite of the petitioner appearing before the authorities concerned, the matter is being unreasonably delayed. Considering the prayer sought for, there will be a direction to the respondents to take into consideration the petitioner's Bill of Entry No.5569500 dated 09.06.2016, namely Axe Oil, of five different containers in bottles of 3ml, 5ml, 10ml, 28ml, 56ml - imported from Singapore, and examine as to whether they require to declare the MRP in the labels, while considering the relevant notifications that may be produced by the petitioner and thereafter, if there is no such requirement for smaller quantities, appropriate orders may be issued for release of the items.
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> 4. In respect of the larger quantities, it is open to the respondent, to pass appropriate orders. While considering the Bill of Entry No.5569500, if there are other oils also imported and clearance sought for under the same Bill of Entry, it is open to the respondent to consider the request made by the petitioner in respect of those items also. Needless

to state that the petitioner shall appear before the respondents, within a period of one week from the date of receipt of a copy of this order."

3. In terms of the above direction, the Department was required to verify as to whether the Maximum Retail Price (MRP) or the Retail Selling Price (RSP) is to be declared in all the containers of the product imported by the petitioner or it is restricted to containers containing larger quantities i.e. from 10ml. The product which was imported is Axe Oil of five different containers in bottles of 3ml, 5ml, 10ml, 28ml and 56 ml. The case of the petitioner is that MRP or RSP is not required to be declared in respect of bottles of 10ml and less than that. Therefore, the Court observed that if there is no requirement for smaller quantities, appropriate orders may be issued for release of the items and in respect of larger quantities, the respondents were granted discretion to pass appropriate orders.

4. It appears that the respondents have not appreciated the scope of the direction issued by this Court and passed an omni bus order dated 21.10.2016 directing the petitioner to execute a bond for a sum of Rs.20 lakhs and a Bank Guarantee for Rs.5 lakhs and whether this bank guarantee is to secure the entire goods or it is applicable to containers of 28ml and over and above 28ml is not clear.

5. The learned Standing Counsel for the revenue would submit that the conditions imposed is to cover larger quantities and he sought time to file a detailed counter affidavit in this regard. Counter Affidavit cannot improve upon the impugned order or add reasons or substitute reasons which are not contained in the impugned order and this is the well settled legal position. Hence, this Court is not inclined to grant time to the Revenue to improve upon the impugned order.

6. Considering the fact that the consignment has been lying in the customs since June 2016, the following order will secure the ends of justice and protect the interest of the revenue:

The petitioner is directed to execute a bond for a sum of Rs.20,00,000/- (Rupees Twenty Lakhs Only) and furnish Bank Guarantee for a sum of Rs.2,50,000/- (Rupees Two Lakhs Fifty Thousand Only) and on complying with both the conditions, the respondents are directed to provisionally release the seized goods under Section 110A of the Customs Act, 1962 within a period of one week from the date on which the bond is executed and Bank guarantee is furnished. It is made clear that this Court has not gone into the merits of the classification of the goods imported and it is well open to the department to take appropriate action in this regard while adjudication proceedings are on.

7. This Writ Petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

jvm

To
1.The Deputy Commissioner of Customs (Group-II),
Chennai II Commissionerate, Customs House,
60, Rajaji Salai,
Chennai-600 001.

2.The Directorate of Revenue Intelligence,
Zonal Unit, Adarsh Towers,
27, GN Chetty Road,
T.Nagar, Chennai-600 017.

+1cc to Mr.K.G. Ragunath, Advocate, S.R.No.66590
+1cc to Mr.V. Sundareswaran, Advocate, S.R.No.67321

KSJ(CO)
md(29/11/2016)

W.P. No.37666 of 2016