IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.04.2017

CORAM:

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.Nos.4001 and 4002 of 2017

M/s.Shri Shyama Corporation,
Rep. By its Proprietor,
Mr.Shri SatyaPrakash Rateria,
Having Office at CK23/23A, Vijayashree Market,
Ranikuwan Chowk, Varanasi, Uttar Pradesh.
[PETITIONER
in W.P.No.4001/17]

M/s.Sangam Traders,
Rep. By its Proprietor,
Shri.Mohit Tulsyan,
Having Office at CK23/23A, Vijayashree Market,
Ranikuwan Chowk,
Varanasi, Uttar Pradesh.
[PETITIONER
in W.P.No.4002/17

Vs

The Commissioner of Customs,
Chennai IV Commissionerate,
Customs House, No.60,
Rajaji Salai, Chennai 600 001.
[RESPONDENT
in both W.Ps.]

Common Prayer:-Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of certiorarified mandamus to call for the records pertaining to the impugned order-in-original No.51796/2016 dated 01.12.2016 issued in F.No.S.Misc.31/2016/CAU-CH.IV and quash the same and further direct the respondent to pass orders to unconditionally release the goods of the petitioner seized, vide panchamma dated 03.06.2016.

For Petitioner : Mr.G.Derrick Sam
in both W.Ps.
For Respondents: Mr.V.Sundareswaran
in both W.Ps. Standing Counsel

COMMON ORDER

Heard the learned counsel appearing for the petitioners and the learned Standing counsel appearing for the respondent.

2.These writ petitions are filed challenging the orders in original dated 01.12.2016, extending the time for issuance of show cause notice under section 124 of the Customs Act, 1962, under the proviso to sub section 110 of the Customs Act, 1962 in respect of the detained/seized the goods imported through the subject matter bill of entries, by another six months upto 02.05.2017. The petitioners further sought for a direction to the respondent to unconditionally release the goods seized on 03.06.2016.

3.Learned counsel appearing for the petitioners submitted that though these writ petitions are filed seeking for the relief as stated supra, the petitioners would be satisfied, if the goods are released subject to payment of 30% of the differential duty of admitted value and on execution of personal bond for the balance amount of 70% of the differential duty, however, without prejudice to the contention of the petitioners to participate in the proceedings and raise all the objections against the proposed action. Learned counsel in support of his submission that only 30% of the differential duty can be collected by the respondent, pending adjudication of the issue, relied on the Division Bench of this court reported in 2013(287) E.L.T 41 (Mad.), Commissioner of Customs, Tuticorin vs Empire Exports.

4.Thus, the crux of the contention made by the learned counsel for the petitioners is that though these writ petitions are filed challenging the impugned orders extending the time limit for issuance of the show cause notices, the petitioners would participate in the proceedings and contest the matter before the respondent, provided the goods are released provisionally subject to the payment of part of the differential duty and execution of personal bond for the balance as stated supra.

5.Learned counsel for the respondent submitted that the differential duty payable by the petitioner is Rs.1,56,821.67 in the case covered in W.P.No.4002 of 2017 and Rs.56,821.07 in the case covered in W.P.No.4001 of 2017. Therefore, he submitted that if the petitioners are willing to pay the differential duty, the goods can be released pending adjudication of the issue.

6.Though these writ petitions are filed challenging the orders extending the time limit for issuance of the show cause notices, since the petitioners have come forward to face the adjudication proceedings and agitate the matter before the respondent subject to the provisional release of the goods on certain conditions as discussed supra, this court is of the view that the correctness or otherwise of the orders passed by the respondent challenged in these writ petitions need not be gone into at this stage. However, the petitioners seek for provisional release on payment of 30% of the differential duty and executing a personal bond for the balance amount. The Division Bench decision relied on by the learned counsel for the petitioners considered this aspect and found that 30% of the differential duty can be directed to be paid also by executing a personal bond for the balance amount. The learned counsel also relied on the Division Bench decision of the Delhi High Court reported in 2016(341) E.L.T 110 (DEL), Spirotech Heat Exchangers Pvt. Ltd. Vs Union of India, on the same issue.

7.Since the petitioners have come forward to face the adjudication proceedings and they are also willing to protect the interest of the revenue by paying 30% of the differential duty and furnishing a personal bond for the balance amount, I am of the view that no prejudice would be caused, if the goods are directed to be released provisionally especially, when the subject matter goods are not totally a prohibited item. Accordingly, these writ petitions are disposed of with the following directions.

a) The petitioners shall face the adjudication proceedings before the respondent;

b) Pending adjudication, the subject matter goods shall be released by the respondent on payment of 30% of the differential duty and execution of personal bond for the balance amount of 70% in each case;

c) On receipt of such payment and personal bond as indicated supra, the respondent shall release the goods, provisionally, forthwith;

It is made clear that this court is not expressing any view on the merits of the matter, which is totally at the hands of the respondent to adjudicate upon. No costs. The connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar(CSV)

True Copy

Sub-Assistant Registrar

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To

The Commissioner of Customs,
Chennai IV Commissionerate,
Customs House, No.60,
Rajaji Salai, Chennai 600 001.

+2 ccs to Mr.V.Sundareswaran Advocate sr 22923
+1 cc to M/s.HariRadhakrishnan Advocate sr 23130

W.P.Nos.4001 and 4002 of 2017

rj(co)
aa19/04/2017