IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.07.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.5019 of 2017 and
WMP.No.5286 of 2017

M/s.N.S.Plasters
Rep. by its Proprietor
Shri B.S.Inayathullah
No.10, Near Ring Road Cross,
Nagawara, Bengaluru-560 045. ...Petitioner

Vs

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

2. The Deputy Commissioner of Customs
   IPR Cell
   Chennai III Commissionerate
   No.60, Rajaji Salai,
   Chennai-600 001. ...Respondents

Prayer:Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents to grant a detention certificate in terms of Regulation 6(1) of the Handling of Cargo in Customs Area Regulations 2009 with respect to goods covered under Bill of Entry No.6959117 dated 03.10.2016.

For Petitioner : Mr.B.Satish Sundar
For Respondents: Mr.T.R.Senthil Kumar

O R D E R

Heard Mr.B.Satish Sundar, learned counsel for the petitioner and Mr.T.R.Senthil Kumar, learned Standing Counsel for the respondents. With the consent of the learned counsel on either side, the writ petition itself is taken up for final disposal.

2. The petitioner seeks for an issuance of a writ of mandamus, directing the respondents to grant a detention

certificate in terms of Regulation 6(1) of the Handling of Cargo in Customs Area Regulation 2009, in respect of the goods covered under the Bill of Entry dated 3.10.2016.

3. The petitioner had imported architectural gypsum mouldings from Malaysia and the goods on arrival at Chennai Port were detained on account of the fact that one M/s.Radha Decors of Puducherry, had registered its claim under Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 (hereinafter referred to as "IPR Rules"), by filing an application under Rule 5 of the IPR Rules. Accordingly, the petitioner was informed by a communication dated 02.11.2016 that the clearance of the goods imported is suspended with immediate effect and as the investigation is likely to take some time, the petitioner was offered storage of the subject goods under Section 49 of the Customs Act, 1962. Further, the petitioner was informed that if they do not avail the facility, they would be responsible for payment of demurrage/detention charges that may be incurred. The petitioner, in compliance of the direction issued by the respondent Department vide letter dated 2.11.2016, availed the facility offered under Section 49 of the Act.

4. Subsequently, by a communication dated 02.01.2017, the second respondent informed the petitioner that since the Right Holder M/s.Radha Decors, Puducherry, have not joined the proceedings, as stipulated under the provisions of IPR Rules, the suspension of the clearance, imposed on the petitioner's consignment dated 03.10.2016 is lifted in terms of Rule 7(3) of the IPR Rules and the petitioner was directed to approach the concerned Appraising Group for further action. For such purpose, the petitioner requested the second respondent to issue Detention Certificate to enable them for approaching the Appraising Group for clearance of the cargo. The Senior Intelligence Officer (IPR), vide communication dated 02.02.2017 informed the petitioner that since the Right Holder has not joined the proceedings, in terms of Para 11 of the IPR Rules and as per the conditions of the Bond executed by them with the respondent Department, the cost of demurrage and detention charges shall be borne by the Right Holder. Since the petitioner has not been issued with any Detention Certificate, they have filed this writ petition.

5. The admitted fact is that the suspension of imported goods was on account of an application being made by the Right Holder under Rule 5 of the IPR Rules. Though such an application was filed and the same was registered under due compliance of the conditions under Rule 5(a) and (b) of IPR Rules, the Right Holder did not participate in the proceedings. Therefore, the second respondent had stated that the suspension of the imported goods is lifted in terms of Rule 7(3) of the IPR

Rules. In such circumstances, the petitioner, for not fault committed by them, cannot be put to prejudice.

6. The second respondent, in Paragraph 18 of the counter affidavit has accepted the fact that it is the responsibility and the liability of the Right Holder to bear the detention/demurrage charges. If such is the stand taken, then the resultant position would be that the petitioner is entitled to a certificate that the goods were detained by the department on account of the claim being registered under the IPR Rules. Therefore, the stand taken by the second respondent in the counter affidavit that the question of issuing Detention Certificate does not arise is untenable.

7. For the above reasons, there will be a direction to the second respondent to issue necessary Detention Certificate stating the reasons for which Cargo was detained and as to when such detention was cleared. This certificate shall be issued without prejudice to the Department to recover the charges payable on account of such detention from the Right Holder by exercising their power under the Rules. The said direction shall be complied with by the second respondent, within a period of three weeks from the date of receipt of a copy of this order.

8. The writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

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

2. The Deputy Commissioner of Customs
IPR Cell
Chennai III Commissionerate
No.60, Rajaji Salai,
Chennai-600 001.
+1 cc to M/s.T.R.Senthilkumar,advocate,sr.49267
+1 cc to M/s.B.Sathish sundar,advocate,sr.49998.

Cp(co)
krd 29/7

W.P.No.5019 of 2017