

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 16.2.2017

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE Dr.JUSTICE ANITA SUMANTH

W.A.No.142 of 2017
and
C.M.P.No.2391 of 2017

1. Union of India,
through the Secretary,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi.
 2. Additional Department of Revenue
Intelligence,
14, Gopalakrishna Iyer Road,
T.Nagar, Chennai 600 017.
 3. Commissioner of Customs,
Chennai-II, Customs House,
No.60, Rajaji Salai, Chennai 600 001.
- Appellants

Versus

1. Its Possible Marketing Limited,
through the Director Ashishkhetarpal,
GN-5, Shvaji Enclave,
Rajouri Garden,
New Delhi 110 027.
 2. Oriental Bank of Commerce,
E-Block, Connaught Place,
New Delhi.
- Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 22.12.2016 passed in W.M.P.No.36401 of 2016 in W.P.No.31734 of 2016 on the file of this court.

WMP.No.36401/2016:Petition filed under Article 226 of the Constitution of India to modify the order passed in WP.31734 of 2016 dated 26.10.2016 and this render justice.

WP.No.31734 of 2016: Writ Petition is filed under Article 226 of the Constitution of India, seeking for Issuance of Writ of Mandamus, directing the respondent Nos.2 & 4 to release the Bank guarantee for Rs.85 Lakhs furnished by the Petitioner.

For appellants : Mrs.R.Hemalatha

For Respondents : Mr.Ankan Suri

JUDGMENT

(Judgment of the court was made by HULUVADI G.RAMESH, J.)

Heard the learned counsel appearing for either side.

2. The writ appeal is filed challenging the order passed by the learned Single Judge dismissing the petition filed by the Department seeking modification of the order passed in the main writ petition.

3. It appears that the writ petitioner, being an importer, was confronted with the proceedings by the Customs Department and in the course of such proceedings, they had furnished bank guarantee and subsequently, the order in original was passed confirming the demand for differential duty and confiscating the consignments, which was challenged by the writ petitioner before the CESTAT. Pending such appeal, the writ petitioner had approached this court with the present writ petition and obtained an order in their favour. The miscellaneous petition filed by the Department seeking modification of the order passed in the writ petition, came to be dismissed. Hence, the present writ appeal is filed.

4. Admittedly, the appeal filed by the assessee challenging the order in original is pending before the CESTAT. The learned counsel for the Department contends that there was some lack of communication with regard to missing of files pertaining to the adjudication with regard to the consignments. Therefore, considering the facts and circumstances of the case and to safeguard the interest of the Customs, the following order is passed.

5. The appeal filed by the assessee before the CESTAT shall be disposed of within a period of four weeks from the date of receipt of a copy of this order. In the meanwhile, the order passed by the learned Single Judge is stayed. The bank guarantee shall be kept alive till the disposal of the appeal before the CESTAT and in the event the writ petitioner is successful, the

bank guarantee may be released. The writ appeal is disposed of accordingly. No costs. The connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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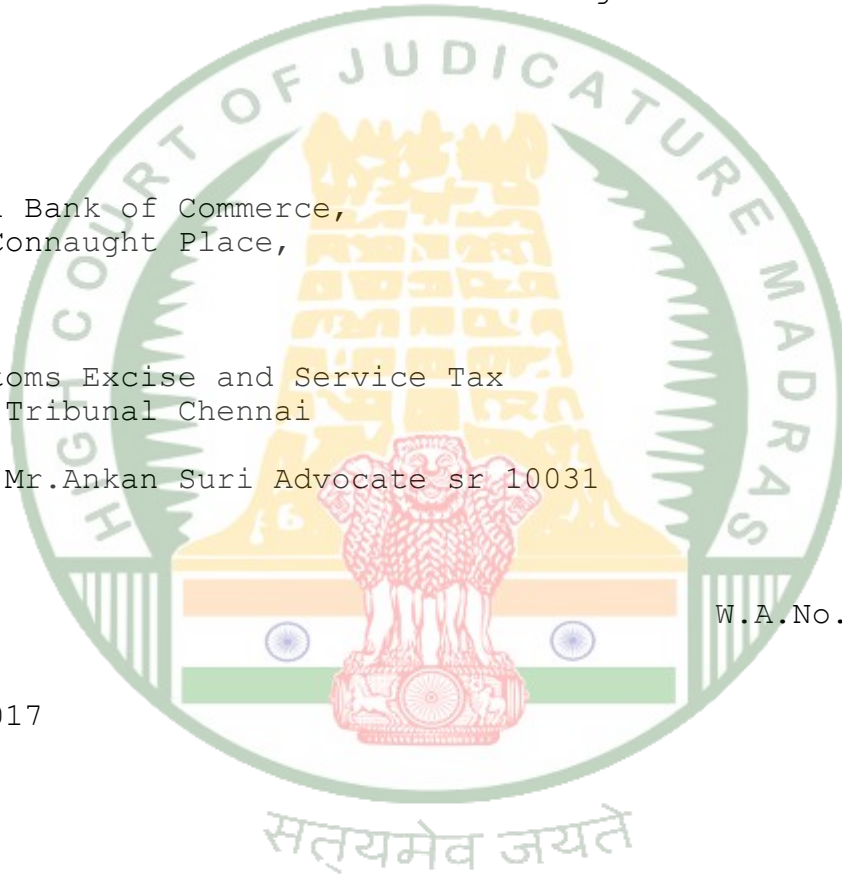
1.Oriental Bank of Commerce,
E-Block, Connaught Place,
New Delhi.

2.The Customs Excise and Service Tax
Appellate Tribunal Chennai

+2 ccs to Mr.Ankan Suri Advocate sr 10031

pa(co)
aa21/02/2017

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