In the High Court of Judicature at Madras

Dated : 18.7.2017

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.7429 & 7430 of 2017 & WMP.Nos.8084 & 8085 of 2017

M/s.Sri G.P.R.Leathers, rep.by its Proprietor Shri G.Prakash Reddy ...Petitioner in WP.7429 of 2017

M/s.Parveen Leather Exports, rep. by its Partner Shri. Jaffer Siddique ...Petitioner in WP.7430 of 2017

Vs

1.The Commissioner of Customs (Exports), Chennai IV Commissionerate, Custom House, Chennai-1.

2.The Deputy Commissioner of Customs (SIIB), Custom House, Chennai-1.

3.The Deputy Commissioner of Customs (Exports), Chennai IV Commissionerate, Custom House, Chennai-1. ...Respondents in both WPs

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Mandamus to direct the respondents to release the goods covered by shipping bill Nos.1415092 and 1415135 respectively both dated 03.10.2016 forthwith for export.

For Petitioners : Ms.V.Pramila

For Respondents : Mr.T.Pramod Kumar Chopda, Senior Standing Counsel

COMMON ORDER

Heard the learned counsel for the petitioners and the learned Senior Standing Counsel for the Department.

2. The writ petitioners seek for a direction to the respondents to release the goods covered by shipping bill Nos.1415092 and 1415135 respectively, both dated 03.10.2016, forthwith for export.

3. The petitioners seek appropriate directions, so that the goods can be exported and in that regard, reliance was placed on the order passed by the Commissioner of Customs, Commissionerate IV, Chennai dated 23.11.2016 passed in the case of Sri.Vijayalakshmi Leathers. This order was put to challenge by the said exporter by filing W.P.No.43062 of 2016, which was tagged along with other connected matters where the other exporters were attempting to export similar type of goods.

4. The petitioners therein were aggrieved by certain conditions imposed by the Commissioner of Customs while ordering for provisional release vide order dated 23.11.2016. The condition imposed by the Commissioner in the said order is as under :

> "......6. The Principal Commissioner of Customs (III) has recommended for provisional release of the said consignments in respect of the above ten shipping bills as above in terms of Board Circular No.01/2011-Cus dated 04.1.2011 (copy enclosed) with the following conditions :
>
> (i) on payment of appropriate duty;
>
> (ii) on execution of bond for the value of the goods and appropriate security for fine and penalty leviable;
>
> (iii) after adequate numbers of samples as required including for possible prosecution may be taken/collected before such provisional release.
>
> 7. In view of the Pr. Commr-III's instructions, it is informed that if the exporters avail the option for provisional release of the goods, the same may be communicated to SIIB before according 'Let Export Order' to enable the SIIB to draw samples as instructed.
>
> 8. The copies of relevant shipping bills and other connected documents are hereby forwarded to you for taking further action.

Further, additional bond may also be taken from the exporters that they shall not claim the benefits of Chapter 3 of Foreign Trade Policy (copy enclosed)."

5. Thus, the petitioners did not have any objection with regard to Clauses 6(ii) and (iii), 7 and 8, but were aggrieved by Clause 6(i) where the Commissioner directed the provisional release subject to payment of appropriate export duty. This Court tested the correctness of the submissions of those petitioners and passed an order on 22.12.2016 by directing the provisional release of the subject goods by relaxing the rigor of the condition contained in Clause 6(i) of the order dated 23.11.2016. The relaxation, which was allowed by this Court, was by substituting Clause 6(i) with an option being given to those petitioners to seek for release of subject goods/ consignments by furnishing bank guarantee of a nationalized bank equivalent to 30% of export duty. This is so, as finished leather, as per the extant policy, is freely exportable, while, generally, unfinished leather i.e. hides, skins, leather - tanned and untanned, are subject to export duty at the rate of 60%. It was made clear that the other conditions contained in Clauses 6, 7 and 8 of the order dated 23.11.2016 passed by the Commissioner remain unaltered.

6. It appears that when those petitioners sought for provisional release of the goods pursuant to the order passed by the Court dated 22.12.2016, the Department is still insisting upon furnishing of bank guarantee for the penalty amount, etc. Therefore, once again, the petitioners approached this Court by filing W.P.Nos.1620 to 1628 of 2017 challenging the subsequent order dated 10.1.2017 passed by the Commissioner to direct the release of the goods. This Court, after taking into consideration its earlier order, disposed of the writ petitions by order dated 25.1.2017 observing that seeking security in the form of bank guarantee is uncalled for and in a sense, dilutes the very essence of the order dated 22.12.2016 passed by this Court in W.P.Nos.43062 to 43070 of 2016, as the respondents, in the earlier round, had not articulated before the Court that they would be requiring security towards fine and penalty in the form of bank guarantee.

7. Therefore, that part of the order dated 10.1.2017 requiring furnishing of security in the form of bank guarantee was directed to be stayed. Further, the communication requiring the petitioners therein to describe the subject goods as 'unfinished goods' was also stayed and the respondents were also directed to release the goods forthwith upon fulfillment of the conditions stipulated in the order dated 22.12.2016. Subsequently, the matter was listed for reporting compliance and

by order dated 30.1.2017, the writ petitions were closed.

8. The learned counsel for the petitioners would submit that the petitioners' case is no different from the earlier cases, which were disposed of by this Court and the conditional order was complied with by the petitioners and that therefore, similar orders should be passed in the petitioners' cases also.

9. The learned Senior Standing Counsel for the Department, while resisting the plea, would contend that as against the order passed by this Court on 25.1.2017 in W.P.Nos.1620 to 1628 of 2017, writ appeals have been preferred and as there was a delay in filing the appeals, the matters are in the process of being listed. Therefore, it is further submitted that the order passed in the earlier writ petitions should not be made applicable to the present cases.

10. As on date, the order dated 22.12.2016 or the subsequent order dated 25.1.2017, passed in W.P.Nos.43062 to 43070 of 2016 and W.P.Nos. 1620 to 1628 of 2017 respectively have not been stayed, altered or modified. Rather, the Department has complied with the directions issued in those writ petitions, which are identical cases to that of the present cases. Thus, this Court is of the view that there is no distinction placed by the Revenue to take a different stand in these cases.

11. Accordingly, the writ petitions are disposed of by directing the respondents to grant provisional release of the goods subject to the petitioners complying with the conditions imposed by this Court in W.P.Nos. 43062 to 43070 of 2016 and W.P.Nos.1620 to 1628 of 2017 respectively dated 22.12.2016 and 25.1.2017. The above direction shall be complied with within a period of **(*) One week** from the date of receipt of a copy of this order. No costs. Consequently, the above WMPs are closed.

Sd/-
Assistant Registrar(CS V)
20.07.2017

(*) Para 11 Corrected as per Order of this Court dated 24.07.2017 of made herein.
Sd/-
Assistant Registrar (V)
25.07.2017

//True Copy//

Sub Assistant Registrar

To

1.The Commissioner of Customs (Exports), Chennai IV Commissionerate, Custom House, Chennai-1.

(*) To be Substituted for the Order already Despatched on 20.07.2017

2.The Deputy Commissioner of Customs (SIIB), Custom House, Chennai-1.

3.The Deputy Commissioner of Customs (Exports), Chennai IV Commissionerate, Custom House, Chennai-1.

+2cc to M/S.V.Pramila, Advocate Sr.50677, 50678
+1cc to Mr.T.Pramod Kumar Chopda, Advocate Sr.**52086**

WP.Nos.7429 & 7430 of 2017&
WMP.Nos.8084 & 8085 of 2017

srg 20/07/2017

cs(25/07/2017)