

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.4488 of 2017 and W.M.P. No.4715 of 2017

R.K.Industries - IV rep. by
its partner - Mr.Ajay Agarwal ...Petitioner

.Vs.

1. The Commissioner of Customs, Chennai (Sea)
Chennai IV, Customs House, 60, Rajaji Salai,
Chennai - 600 001.
2. The Deputy Commissioner of Customs (DEEC) GR.7/Sea
Chennai IV, Customs House, 60, Rajaji Salai,
Chennai - 600 001.
3. The Assistant Commissioner of Customs (Refunds)
Chennai (Sea), Customs House,
60, Rajaji Salai, Chennai-600 001 ...Respondents

Prayer: The writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order dated 28.11.2016 passed by the third respondent vide order in original No.51666/16, quash the same and consequently direct the respondents to refund the amount of Rs.4,50,000/- to the petitioner, without insisting for the original challan for having deposited/encashed the pay order, issued towards enforcing the Bank Guarantee given by the petitioner to the third respondent.

For Petitioner : Mrs. R.Saravanakumar

For Respondents : Mrs.K.Ravi

O R D E R

Heard Mr. R.Saravanakumar, learned counsel for the petitioner and Mr.K.Ravi, learned counsel appearing for the respondents.

2. The petitioner has filed this writ petition

challenging the order passed by the third respondent rejecting the petitioner's application for refund of a sum of Rs.4,50,000/- which was recovered by the Department by encashing a bank guarantee furnished by the petitioner on the ground that the petitioner had not fulfilled the export obligations as required to be done in terms of the advance license granted to the petitioner dated 11.06.2010. The reason for rejecting the petitioner's application is on the ground that the petitioner has not filed documents evidencing enforcement and deposit of the enforced amount.

3. This Court was rather surprised as to how the third respondent could reject the petitioner's application on the ground stated in the impugned order. Therefore, while entertaining the writ petition, this Court passed the order dated 21.9.2017 to enable the respondents to give proper instructions to the learned Standing Counsel and file counter affidavit. For better appreciation, the order dated 21.9.2017 is quoted herein below :

"After hearing the arguments on either side, this Court was inclined to allow the writ petition and set aside the impugned order primarily for two reasons.

2.It is for the respondent Department to verify the records and ascertain the date on which they have encashed the bank guarantee furnished by the petitioner. Unfortunately, the respondent department has directed the petitioner to prove the negative, despite there being a legal embargo on this. The petitioner took steps to produce copy of the TR6 challan, which contains seal of the customs department dated 04.12.2014. This has been done by the petitioner by approaching the State Bank of India, Harbour Branch, which is the Bank, where the Department maintains transaction.

3.Learned senior standing counsel for the respondents would submit that the Department is in the process of verification of the records and will revert back to this Court on the next hearing date and thus, submits that instead of setting aside the impugned order and remanding the matter, the learned counsel for the respondent will get specific written instructions, if the respondent Department is able to ascertain as to when they have encashed the bank guarantee

furnished by the petitioner. The respondents have to take a default stand, because the bank guarantee was encashed by the Department and to state that the petitioner has to produce the date on which the Department has encashed the bank guarantee is wholly unsustainable. With these observations, one more final chance is given to the respondent Department to give proper instructions to the counsel as to on which date the bank guarantee was enforced etc., so as to issue positive direction for grant of refund.

4. List the matter on 09.10.2017."

4. The respondents filed a counter affidavit and in para 4 of the counter affidavit, it has been admitted that the bank guarantee furnished by the petitioner has been enforced vide manual TR6 challan no.MC/OTH-56 dated 04.12.2014. It has been further admitted that the petitioner subsequently submitted the redemption letter dated 22.07.2015 issued by the Additional Director General of Foreign Trade, Chennai, stating that the petitioner fulfilled the export obligations.

5. The respondent department cannot be found fault with for encashing the bank guarantee on 04.12.2014, since the petitioner has produced the redemption letter from the Competent Authority/Additional Director General of Foreign Trade, subsequent to the encashment of the bank guarantee. However, the respondents are bound to honor the redemption letter and effect the refund. The respondents cannot call upon the petitioner to prove when the bank guarantee was encashed. It is for the Department to verify their records and come to a conclusion.

6. In the counter affidavit, the respondents having accepted the fact that they have encashed the bank guarantee on 04.12.2014, nothing more remains to be established by the petitioner.

7. For the above reasons, the writ petition is allowed, the impugned order is quashed and the respondents are directed to refund the sum of Rs.4,50,000/- to the petitioner within a period of eight weeks from the date of receipt of a copy of this order.

-sd/-

Assistant Registrar

/ TRUE COPY /

Sub-Assistant Registrar

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To,

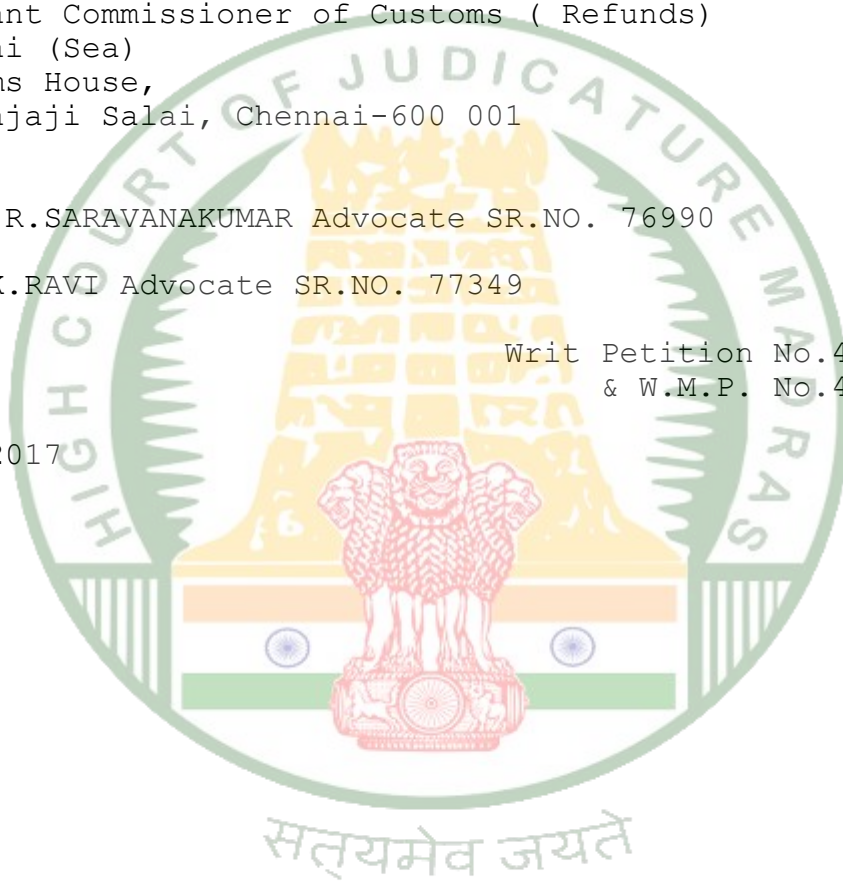
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+1 cc to R.SARAVANAKUMAR Advocate SR.NO. 76990

+1 cc to K.RAVI Advocate SR.NO. 77349

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RD 17/11/2017



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