

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.08.2017

CORAM:

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.9571 of 2017

and

W.M.P.No.10520 of 2017

M/s. Orion Enterprises,
No.4, Lalta Yadav Chal,
Near Prakash Nagar,
Lake Road, Sonapur,
Bhandup West,
Mumbai-400 078.
Rep. by its Partner
Shri Mohamad Salim.

..Petitioner

Vs.

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

2. The Joint/Addl. Commissioner of Customs,
Group 5B, Commissionerate-II,
Custom House,
No.60, Rajaji Salai,
Chennai-600 001.

3. Assistant Commissioner of Customs,
Group 5B, Commissionerate -II,
Custom House,
No.60, Rajaji Salai,
Chennai- 600 001.

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4. Assistant Director,
O/o. Directorate of Revenue Intelligence,
Chennai Zonal Unit,
27, Adarsh Towers,
G.N. Chetty Road, T.Nagar,
Chennai-600 017.

..Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus directing the respondents herein to cause provisional release of imported RHD New Brand Cadillac Escalade ESV Vehicle - Luxury collection 10 seats, 6.2L V8 Petrol. Bearing Chassis No.1GYS4HKJGR 3420 covered under Bill of Entry No.87029011 dated 24.03.2017 and for issue of a detention certificate in terms of Handling of Cargo in Customs Area Regulation, 2009 subject to such terms and conditions as may be imposed by this Hon'ble Court entity.

For Petitioner : Dr. S.Krishnanandh

For Respondents 1 to 3 : Ms.S.Seethalakshmi,
Central Government Standing Counsel

For Respondent No.4 : Mr.V.Sunderaswaran

सत्यमेव जयते

ORDER

Heard Dr.S.Krishnanandh, learned counsel for the petitioner and Ms.S.Seethalakshmi, Central Government Standing Counsel for respondents 1 to 3 and Mr.V.Sunderaswaran, learned counsel for the 4th respondent.

2. The petitioner has filed this writ petition praying for a direction upon the respondents to provisionally release the imported right hand driving brand new Cadillac Escalade ESV Vehicle Luxury Collection 10 seater, subject to the terms and conditions.

3. The writ petition was heard on several dates. After the counter affidavit was filed by the respondent setting out the grounds on which the relief sought for could not be granted. The ultimate issue boils down to only two matters namely that the vehicle was manufactured in the United States as a left hand driven eight seater car, the same was imported to Srilanka, converted into Right hand drive and imported to Chennai. The DRI raised an objection that the value assessed for the vehicle is incorrect, as the vehicle has been converted into a ten seater Car which attracts lesser duty and on account of this valuation, it may result in penalty being imposed on the petitioner/importer. The second objection raised by the DRI was whether the vehicle on being converted as right hand driven vehicle, can it ply in the Indian roads. To enable the respondents to be satisfied with regard to these aspects, they insisted upon production of a Certificate of Procurement of an Accredited Agency from any member State of European Union, including a notarized English translation thereof and if this certificate was produced, it appears that DRI would be satisfied that the vehicle can be driven in India.

4. The petitioner requested for provisional release vide representation dated 10.04.2017 and since the same was not considered and kept pending, the petitioner has filed this writ petition.

5. The petitioner has produced a certificate issued by the manufacturer, General Motors, viz., EC Certificate of Conformity with the translated version of the Certificate. The relevant portion of the translated version of the certificate reads as follows :

Herewith, the signatory M.H. Van der Heijden certifies that the vehicle:

0.1. Factory Brand : CADILLAC

0.2. Type : K2XX

0.2.1. Trade Name : Escalade ESV

**0.5. Company name and address of the Manufacturer:
General Motors Holdings LLC
Detroit
Michigan 48265 USA**

(It) conforms in all respects to the type described in the approval e 13*2007/46*1479*04 issued on 06.02.2017 and can be permanently registered in Member States for the continuous participation in road transport having right-hand traffic, in which metric units are used for the speedometer.

20. Manufacturer of the engine : General Motors Company

42. Number of seats (including driver's seat) : 8

From the above certification, it is clear that the vehicle has been certified to be driven in a Country having right hand traffic, where the speedometer is in metric units. Therefore, the respondent DRI cannot raise objection in this regard, as the petitioner has produced necessary EC certificate.

6. The Court has raised a query as to why the vehicle manufactured in USA as a left hand driving had been imported to Srilanka. The learned counsel for the petitioner submitted that the vehicle unless converted into a right hand driven vehicle cannot be imported to various countries including India, where the traffic moves towards the left. The agency which does the conversion is a company established in Australia, carrying on business for over 20 years and they have a full fledged establishment in Srilanka for undertaking such conversion. In this regard, Email correspondence between the petitioner and heavy vehicles @ infrastructure.gov.au issued by the Australia Government has been produced.

7. Materials placed before this Court certifies that the authenticity of the conversion done in Srilanka. Thus, the only issue that remains to be considered is whether, what would be the appropriate rate of duty which the vehicle has to be assessed to. As per the EC Certificate of Conformity, the number of seats in the vehicle is eight, whereas, imported vehicle has ten

seats and owing to which the petitioner has assessed the vehicle to a lesser rate of duty.

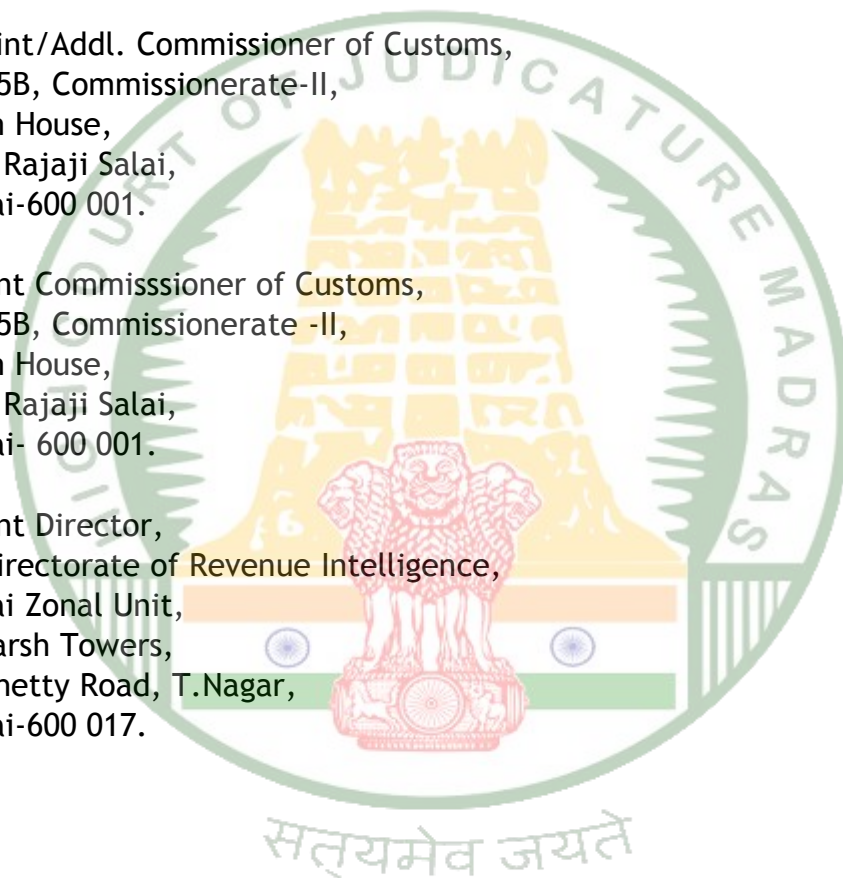
8. Thus, considering the above facts and circumstances, there shall be a direction to the respondents to provisionally release the vehicle in question by taking into consideration the certificate viz., EC Certificate of Conformity produced by the petitioner, the relevant portion of which has been referred in the preceding paragraph, and assess the vehicle provisionally as eight seater vehicle and the petitioner is directed to remit the additional duty and furnish a bond for the full value of the vehicle, in the event of the ultimate adjudication resulting in levy of other charges/penalty. The vehicle shall be released on compliance of the above directions within two weeks thereof. The respondents are at liberty to issue show cause notice after the vehicle is provisionally released and commence the adjudication proceedings at the earliest. The petitioner shall undertake to co-operate in the adjudication without adopting any dilatory tactics and an affidavit be filed before the respondents to the said effect. No costs. Consequently, connected miscellaneous petition is also closed.

08.08.2017

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Index:yes/No
Internet:yes
Speaking order/Non speaking order.

To

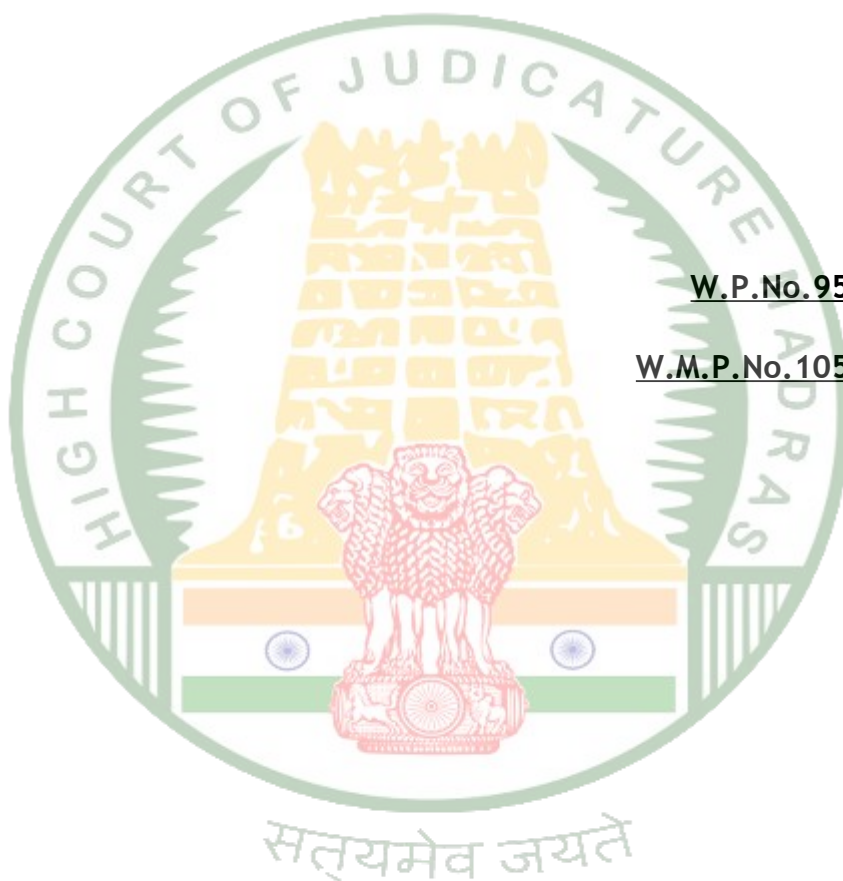
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