IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.11.2017

Coram

The Hon'ble Mr. Justice T.S.Sivagnanam

Contempt Petition No.1788 of 2017
+
W.M.P.No.27347 of 2017
in
W.P.No.19767 of 2017

M/s. Kanishka Enterprises,
rep. by its Authorized Signatory
G. Shankarlingam.
... Petitioner

Vs.

Shri Prashanth Kumar Kakarla,
The Assistant Commissioner of Customs (Gr. 7H)
No.60, Rajaji Salai, Customs House,
Chennai - 600 001.
... Respondent

Contempt Petition filed under Section 11 of the Contempt of Courts Act, 1971, praying to punish the respondent for willful disobedience of the order passed by this Court, in W.P.No.19767 of 2017, dated 10.08.2017.

For Petitioner : Mr.S.Baskaran

For Respondent : Mr. K. Ravi
Senior Panel Counsel

COMMON ORDER

The Contempt Petition has been filed by the petitioner, M/s. Kanishka Enterprises, alleging willful disobedience of the order and direction passed by this Court, in W. P. No.19767 of 2017, dated 10.08.2017. On the other hand, Revenue has filed a Writ Miscellaneous Petition, in W.M.P.No.27347 of 2017, to modify the order passed in the said Writ Petition.

2. As the parties in both Petitions are one and the same, and the relief sought for thereunder is inter-connected, these Petitions are hence, heard together, and they stand decided/disposed of, by this common order.

3. Heard Mr.S.Baskaran, the learned counsel appearing for the contempt petitioner/writ petitioner, Mr. K. Ravi, the learned Senior Panel Counsel for the Revenue.

4. The aforesaid Writ Petition was filed by the contempt petitioner for a direction upon the Department to implement its order, dated 16.06.2017, which granted provisional release of the goods imported by the petitioner, which were detained for investigation by SIIB. This Court heard the matter on merits and disposed of the Writ Petition, by an order, dated 10.08.2017. The operative portion of the said order reads as follows:-

> " 6. The submission made by the learned counsel for the second respondent could have been accepted if the first respondent has not exercised his statutory powers and granted provisional release. As long as the order passed by the first respondent remains intact, the second respondent cannot sit in judgment over the order of the first respondent. However, this Court is conscious of the fact that, because of the provisional release, the ongoing investigation should not be hampered.
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> 7. In the light of the above, there will be a direction to the first respondent to provisionally release the goods in terms of the order, dated 16.06.2017, after accepting the payment of duty amounting to Rs.1512289/- on the re-determined value as per SIIB report and on re-verifying the bank guarantee and personal bond filed by the petitioner, within a period of 10 days from the date of receipt of a copy of this order. By then, it is open to the second respondent to examine the cargo imported by the petitioner, which is sought to be cleared by the said Bill of Entry."

5. The fact that the Revenue has approached this Court, seeking for modification coupled with clarification would clearly show that, there is no intention to willfully disobey the order and direction issued by this Court. Therefore, no action for contempt could be initiated against the Revenue Department. However, it has to be seen, as to whether the relief sought for in the modification Petition can be granted.

6. The prayer sought for in the modification Petition has been carefully worded, and, on a closure scrutiny, it is seen that, what the Department seeks to do is to review the order passed in the Writ Petition. This is clearly impermissible by way of modification Petition. This is sufficient to dismiss the modification Petition. However, considering the fact that, the Department is ready and willing to comply with the provisional release of the goods, in terms of its order, dated 16.06.2017, and only seeks for clarification that, such of those goods, which have not been cleared by the SIIB for IPR violations or otherwise, should not be directed to be released, and accordingly, the learned counsel appearing for the writ petitioner would submit that, only such of the goods, which have been cleared by the SIIB may be considered for release and the writ petitioner does not seek for release of the goods, which have been detained for IPR violation or otherwise, in fact, the order passed by the Assistant Commissioner of Customs, viz., the order of provisional release, dated 16.06.2017 is only in respect of the non confiscated goods, this Court is of the view that, by release of such goods, the Department need not have any apprehension that, it would hamper the investigation or the ultimate result of the adjudication, if already commenced.

7. For the reasons stated above, the prayer, as sought for by the Department in the modification Petition is rejected, with an observation and direction that, the provisional release of the goods in terms of the order, dated 16.06.2017, shall cover only the non confiscated goods and the Department is directed to comply with the order passed in W.P.No.19767 of 2017, dated 10.08.2017 within a period of 15 days from the date of receipt of a copy of this order.

8. In the light of the reasons assigned in this order for rejecting the modification Petition, the Contempt Petition stands dismissed. No costs.

9. The learned counsel for the writ petitioner/contempt petitioner submitted that the goods have been detained since 17.04.2017, and they have suffered high demurrages and the writ petitioner has filed an Application for waiver. Since the goods were detained for examination at the instance of SIIB, there should not be any difficulty for the Department to give a Demmurrage and Detention Certificate from the date of detention till the date of release.

SD/-

ADDITIONAL REGISTRAR(OS-I)

msm/sd

//Certified to be true copy//

Dated at Madras this the day of 2017.

COURT OFFICER(O.S.)

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KR/CO/05/12/2017

one cc to M/s.S.Baskaran, Advocate, Sr.No.14020/17