IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 25.01.2017

CORAM

The Hon'ble Mr.Justice HULUVADI G.RAMESH
AND
The Hon'ble Dr.Justice ANITA SUMANTH

W.A. No.47 of 2017
and
CMP No.6970 of 2017

The Assistant Commissioner (CT),
Cholavaram Assessment Circle,
Jawaharlal Nagar, Red Hills,
Chennai-600 052. .. Appellant

vs.

1.Tvl.Sical Multimodal and Rail
Transport Limited, CFS Division,
(Formerly Sical Distriparks limited),
represented by its authorized signatory
Mr.T.Subramanian,
New No.32, Old No.47, Rajaji Salai,
Chennai-600 001.

2.M/s.Ayya Steels,
Plot No.165/166, Nehru Nagar,
Manali New Town, Chennai.

3.The Manager,
IDBI Bank, 115, Anna Salai,
Saidapet, Chennai-15. .. Respondents

Appeal filed under Clause 15 of Letters Patent against the order passed by the learned Judge in W.P. No.17145 of 2015 dated 15.07.2015 on the file of this Court.

WP.No.17145/2015

Writ Petition filed Under Article 226 off the Constitution of India Praying to issue writ of Ceertiorarified Mandamus to call for the records of the first respondent in TIN 33481705621/ 2013-14/A2 dated 3.6.2015 for the year 2013-2014 and the consequential Notice issued to the third respondent bankers of the petitioner Company TIN 33481705621/ 2013-14/A2 dated 6.6.2015 and quash the same and thereby direct the first respondent to return the amount of Rs.75 27 657/- that has been unlawfully appropriated from the petitioner Company which is in clear violation of the provisions of the Customs Act 1962

For appellant : Mr.Kanmani Annamalai, Special Government Pleader (Taxes)

For respondents : Mr.R.Sivaraman for R1

JUDGMENT

(Judgment of this Court was delivered by HULUVADI G.RAMESH, J.)

The present Writ Appeal is filed challenging an order dated 15.07.2015 passed by the learned Single Judge in W.P. No.17145 of 2015.

2.Heard the learned Special Government Pleader for the appellant and the learned counsel for the first respondent.

3.It is seen that the cargo containing the goods of the second respondent was lying at the CFS facility of the first respondent herein from 17.06.2013. However, the first respondent herein had initially issued notice under Section 48 of the Customs Act on 22.07.2013 requesting the second respondent to clear the said cargo. As there was no response from the second respondent, despite reminders, the first respondent herein sold the same to one M/s.New Golden Steels for a sum of Rs.40,77,000/- vide E-auction dated 28.11.2014 and the first respondent herein had statutorily complied with the requirement of Section 150 of the Customs Act.

4.It is further seen that the petitioner herein has issued the impugned notices for recovery of dues. Hence, the first respondent has come to this Court seeking a direction to the petitioner to return the amount of Rs.75,27,657/- that has been unlawfully appropriated from them. Learned Single Judge, while allowing the petition, has observed that the appellant without application of mind erroneously resorted to attach the bank account of the first respondent company.

5.It appears that the garnishee order came to be issued on 30.12.2014 much after the proceedings of the e-auction have been appropriated by the CFS Agents on 06.08.2014. Such being the case, it is not proper on the part of the Government to issue a garnishee order on the sale proceeds by invoking Section 45(1)(b) of the Tamil Nadu Value Added Tax Act. However, Section 150 of the Customs Act reads thus:

> “150. Procedure for sale of goods and application of sale proceeds -
>
> (1)Where any goods not being confiscated goods are to be sold under any provisions of this Act, they shall, after notice to the owner thereof, be sold by public auction or by tender or with the consent of the owner in any other manner.
>
> (2)The proceeds of any such sale shall be applied --
>
> (a)firstly to the payment of the expenses of the sale,
>
> (b)next to the payment of the freight and other charges, if any, payable in respect of the goods sold, to the carrier, if notice of such charges has been given to the person having custody of the goods,
>
> (c)next to the payment of the duty, if any, on the goods sold,
>
> (d)next to the payment of the charges in respect of the goods sold due to the person having the custody of the goods,
>
> (e)next to the payment of any amount due from the owner of the goods to the Central Government under the provisions of this Act or any other law relating to customs and the balance, if any, shall be paid to the owner of the goods:
>
> (Provided that where it is not possible to pay the balance of sale proceeds, if any, to the owner of the goods within a period of six months from the date of sale of such goods or such further period as the Commissioner of Customs may allow, such balance of sale proceeds shall be paid to the Central Government.)”

6.When the garnishee order has been issued subsequent to the appropriation of the entire sale proceeds, the appellant has to proceed against the dealer independently, as no proceeds remain left with the CFS Agency. In the circumstances, the attachment of the Bank Account of the first respondent for the dues of the dealer is unsustainable in law. Hence the order of the learned single Judge requires no interference. Accordingly, the appeal is dismissed Consequently WMP is closed.

sd/
Assistant Registrar(CS IV)

/true copy/

Sub Assistant Registrar

VGA

+1cc to Mr.R.Sivaraman, Advocate SR.No.5534
+1cc to the Special Government Pleader Sr.No.4882

W.A. No.47 of 2017

SK(CO)
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