IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.09.2017

Coram

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

Writ Petition No.21787 of 2017
and
W.M.P.Nos.22801 &22802 of 2017

M/s. Goyal Impex & Industries Ltd.,
rep. by its Director, Shri Hira Lal.
...Petitioner

Vs.

1. The Assistant Commissioner of Customs,
Group -7B-7H , Customs House,
No.60, Rajaji Salai, Chennai - 600 001.

2. The Deputy Commissioner of Customs (SIIB-Sea)
Customs House,
No.60, Rajaji Salai, Chennai - 600 001.

3. The Commissioner of Customs,
Chennai -III, Customs House,
No.60, Rajaji Salai,
Chennai - 600 001.

4. The Commissioner of Customs,
Chennai -IV, Commissionerate,
Customs House,
No.60, Rajaji Salai, Chennai - 600 001. ..Respondents

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for records of the first respondent leading to issuance of the communication in F.No.S.Misc.38/2017-DEPB, dated 29.06.2017, and to quash the same and further, to direct the first respondent to release the balance 20% goods covered under Bills of Entry Nos. 9650388, dated 11.05.2017 and 9791497 dated 23.05.2017 on execution of personal bond for the value of the goods.

For Petitioner : Mr.S. Krishnanandh

For Respondents : Mrs.R. Hemalatha
Senior Panel Counsel

ORDER

Heard Mr. S. Krishnanandh, the learned counsel appearing for the petitioner and Mrs.R. Hemalatha, the learned Senior Panel Counsel for the respondents. With consent on either side, the Writ Petition is taken up for final disposal.

2. The petitioner has sought for issuance of a Writ of Certiorarified Mandamus to quash the communication issued by the first respondent, dated 29.06.2017, and consequently, to direct the first

respondent to release the balance 20% goods covered under Bills of Entry Nos. 9650388 dated 11.05.2017 and 9791497 dated 23.05.2017 on execution of personal bond for the value of the goods.

3. The petitioner, which is a Public Limited Company, is engaged in the business of import and sale of yarn, blankets, textiles, fabrics, plastic film, etc., and are manufacturers, representatives, agents of the said products, and they are also functioning as Stock Lot Dealers for the said products.

4. The petitioner had imported similar goods earlier and filed 7 Bills of Entry. However, the same was detained by the respondent/Customs Department, as it was opined that a test has to be conducted as to the contents of the Cargo. So far as the imports effected by the petitioner are concerned, there was a reference made to the Circular, bearing No.38 of 2012, issued by the Assistant Commissioner of Customs (DEPB/7H), the first respondent, vide communication dated 17.03.2017, addressed to the Deputy Commissioner (Docks), All Cargo CFS, Chennai, in no certain terms, stated that, assessment in respect of the 7 Bills of Entry filed by the

petitioner have been resorted to provisional, as per Serial No.6 (a) and 6 (b) (2) of Circular No.38 of 2012, and therefore, the question of detention of the 15% to 30% cargo in lieu of security does not arise. Therefore, it was requested that the cargo to be released to the petitioner, pertaining to 7 Bills of Entry.

5. According to the petitioner, they had no other option, rather compelled to give a letter, dated 06.06.2017, to the Deputy Commissioner of Customs (SIIB) that they have agreed that 15 % of the goods may be detained and kept in CFS for further action. It appears that 80% of the goods had already been released on 13.07.2017.

6. The learned Senior Panel Counsel for the respondent/Customs Department would submit that the test report in respect of the samples, which were drawn at the time of release of 80% of the cargo is yet to be received from the Laboratory.

7. Be that as it may, till date, no proceedings have been initiated against the petitioner for the quantity of cargo already released. That apart,

the petitioner has been regular importer of the very same goods, and on an earlier occasion, the goods detained were released by obtaining a bond from the petitioner. In this regard, it is relevant to point out that, Circular No.23 of 2004 (Customs) dated 15.03.2004, states that the test report will be valid for a period of six months in cases, where, textiles/textile articles of the same specification/quality are imported and the importer, supplier and the country of origin are the same.

8. It appears that, in the instant case, the test report, which has to be obtained by the petitioner based on which, goods covered under 7 Bills of Entry, dated 17.03.2017 released based on simple bond, is the same product and the test report being well within the period of six months, there can be no difficulty for the Department to accept the said report, and provisionally release the cargo. Thus, merely because, the petitioner has given a letter, dated 06.06.2017, stating that 15% of the goods may be detained, cannot operate as estoppel against the petitioner.

9. Thus, for the afore said reason, this Writ Petition is disposed of, by directing the first respondent to provisionally release the balance

amount of cargo, viz., 15%, which has been detained, after obtaining requisite bond from the petitioner. On receipt of the test report, it is open to the respondents to finally assess the Bills of Entry, after issuing show cause notice. This direction for provisional release of the goods shall be complied with within a period of 10 days from the date of receipt of a copy of this order. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

12.09.2017

sd
Index : yes/no

Note to Office : Issue order copy on 14.09.2017

To

1. The Assistant Commissioner of Customs,
   Group -7B-7H , Customs House,
   No.60, Rajaji Salai, Chennai - 600 001.

2. The Deputy Commissioner of Customs (SIIB-Sea)
   Customs House,
   No.60, Rajaji Salai, Chennai - 600 001.

3. The Commissioner of Customs,
   Chennai -III, Customs House,
   No.60, Rajaji Salai,
   Chennai - 600 001.

4. The Commissioner of Customs,
   Chennai -IV, Commissionerate,
   Customs House,
   No.60, Rajaji Salai, Chennai - 600 001.

T.S.Sivagnanam, J.

sd

Writ Petition No.21787 of 2017

12.09.2017