

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.4090 of 2008 & M.P.No.1 of 2008

M/s.Neycer India Limited, rep. by its
General Manager, Mr.J.Sreenivas,
No.33/24A, Ranjith Road,
Kotturpuram, Chennai-600 085. Petitioner

Vs.

- 1.Assistant Commissioner of
Customs (EPCG), Office of the
Commissioner of Customs (Export),
Custom House, No.60, Rajaji Salai,
Chennai-600 001.
- 2.The Bank of India,
rep. by its Chief Manager,
Chennai Corporate Banking Branch,
Tarapur Towers, 826/6, Anna Salai,
Chennai-600 002.
- 3.Board for Industrial and Financial
Reconstruction, rep. by its Chairman,
Jawahar Vyapar Bhawan,
1, Tolstoy Marg., New Delhi-110 001. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records comprised in impugned notice in F.No.S45/247/2000 - EPCG dated 08.02.2008, on the file of the first respondent, quash the same and to further direct the first respondent not to resort to any recovery proceedings unless the scheme is sanctioned and implemented under the SICK Industrial Companies (Special Provisions) Act, 1985.

For Petitioner : M/s.Cynduja Krishnan

For Respondents : Mr.B.Rabu Manohar, for R1

Mr.S.Sathya Narayanan, for R2

O R D E R

Heard M/s.Cynduja Krishnan, learned counsel for the petitioner, Mr.B.Rabu Manohar, learned counsel for the first respondent and Mr.S.Sathya Narayanan, learned counsel for the second respondent.

2.The petitioner has filed this writ petition challenging an order passed by the first respondent dated 08.02.2008, addressed to the second respondent/Bank, requesting them to honour the bank guarantee furnished by the petitioner as a part of the condition stipulated under the EPCG scheme. The bank guarantee was sought to be enforced by the impugned order on account of the fact that the petitioner did not complete the export obligation and did not produce the discharge certificate. This writ petition was filed on account of the fact that the petitioner has been declared as SICK industrial undertaking and the matter is pending before the BIFR. The Court having considered the said issue, granted an order of interim stay and the writ petition is pending.

3.Initially there was a scheme framed by the BIFR. Subsequently, there is a revised scheme, which is framed by the BIFR dated 01.10.2008. Learned counsel for the petitioner has drawn the attention of this Court to paragraph 10(1)(1)(d) of the modified re-habilitation scheme, which reads as follows:

"10(1)(1)(d) Department of Central Excise and Customs:

The Deptt of DCEC to grant 12 years' time from the commencement of the rehabilitation scheme, for complying with Export Obligation requirements in respect of import of capital equipment for the company."

4.It referring to the said clause, it is submitted by the learned counsel for the petitioner that the petitioner has been granted twelve years time for complying with the export obligation and the twelve years period would expire on 2020-2021. Therefore, it is submitted that the impugned order may be set aside.

5.Learned counsel appearing for the second respondent would submit that the bank guarantee furnished by the petitioner is still valid and in force.

6.Learned counsel for the first respondent by referring to the counter affidavit pointed out that amount towards central excise and customs duty are not covered in the revival scheme. However, what is important to note is that the present relief granted to the petitioner is under revised re-habilitation scheme. Therefore, the first respondent has to re-consider the matter and pass a fresh order, since time has been granted to the petitioner for complying with the export obligation.

7.Thus, for the above reasons, this writ petition is disposed of by remanding the matter to the first respondent for fresh consideration. The first respondent shall issue a notice to the petitioner, who shall appear through their authorised representative and place all the papers referring to the revised re-habilitation scheme as framed by the BIFR and after affording an opportunity of personal hearing, the first respondent shall pass orders on merits and in accordance with law. The bank guarantee furnished by the petitioner shall be kept alive and abide by the fresh orders to be passed by the first respondent. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-iii)

//True Copy//

Sub Assistant Registrar

abr

To

1.The Assistant Commissioner of
Customs (EPCG), Office of the
Commissioner of Customs (Export),
Custom House, No.60, Rajaji Salai,
Chennai-600 001.

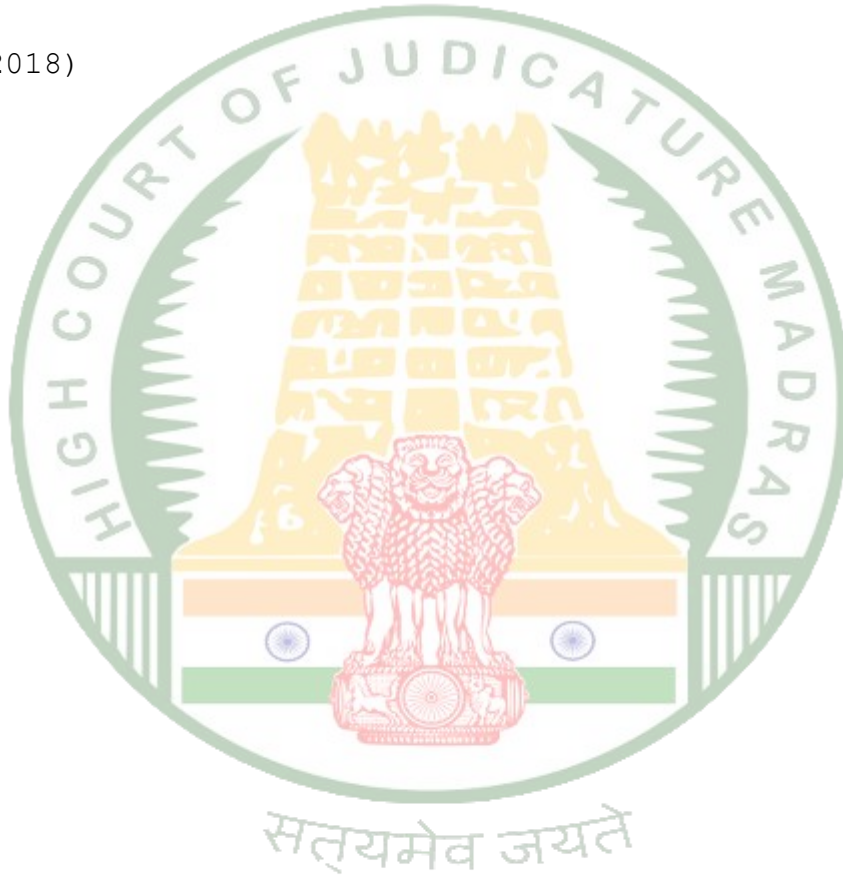
2.The Chief Manager,
The Bank of India,
Chennai Corporate Banking Branch,
Tarapur Towers, 826/6, Anna Salai,
Chennai-600 002.

3.The Chairman,
Board for Industrial and Financial
Reconstruction, Jawahar Vyapar Bhawan,
1, Tolstoy Marg., New Delhi-110 001.

+1cc to Mr.S.MUTHUVENKATARAMAN, Advocate, S.R.No. 90120
+1cc to Mr.S.SATHIYANARAYANAN, Advocate, S.R.No. 90438
+1cc to Mr.B.RABU MANOHAR, Advocate, S.R.No. 90106

W.P.No.4090 of 2008

NRK (CO)
TR(18/01/2018)



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