

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.11.2017

CORAM

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

W.P.No.24152 of 2017

M/s.Thiru Rani Logistics Pvt. Ltd.,
No.1, New North Ring Road
Madhavaram, Chennai 600 110.
Rep.by its Authorized Signatory
Shri P.Manivasagam

... Petitioner

Vs.

1.Chief Commissioner of Customs
Custom House, No.60, Rajaji Salai,
Chennai 600 001.

2.The Commissioner of Customs
Chennai VI Commissionerate
Custom House, No.60, Rajaji Salai,
Chennai 600 001.

.. Respondents

PRAYER : Petition filed Under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondents and more particularly the 1st respondent to consider the petitioner's representation dated 01.02.2017 for refund of excess cost recovery charges collected from them in accordance with law.

For Petitioner : Dr.S.Krishnanandh

For Respondents : Mr.V.Sundareswaran
Senior Panel Counsel

सत्यमेव जयते
O R D E R

Heard Dr.S.Krishnanandh, learned counsel for the petitioner and Mr.V.Sundareswaran, learned Senior Standing counsel appearing for the respondents.

2.The writ petition has been taken up for final disposal, since pleadings are complete as the respondents have filed counter affidavit.

3.The petitioner seeks for a direction upon the 1st respondent to consider his representation dated 01.02.2017 for refund of excess cost recovery charges collected from them. The

petitioner is a container freight station. Earlier they had filed a representation on 29.03.2016 requesting for waiver from payment of cost recovery charges for the period during which officers were not posted. According to the petitioner, they had paid excess amount of Rs.11,79,412/-. The said representation was pending and since orders were not passed on the same, the petitioner filed a writ petition before this Court in W.P.No.20828 of 2016, which was disposed of by directing the respondent to pass appropriate orders on merits and in accordance with law within a time frame. Pursuant to which, an order has been passed on 27.09.2016 granting the petitioner partial relief i.e. with prospective effect from 01.10.2016 subject to the condition that the petitioner pays cost recovery charges upto 30.09.2016. The petitioner has complied with the said condition imposed in the order dated 27.09.2016.

4.As rightly pointed out by the learned Senior Standing Counsel for the respondents, the petitioner has not questioned the order dated 27.09.2016 in so far as it directs the petitioner to pay the cost recovery charges upto 30.09.2016. Thus, having allowed the said order to attain a finality, now the petitioner seeks for a direction upon the 1st respondent to consider the representation dated 01.02.2017 submitted before the 1st respondent. I find the said representation is verbatim the same as that of the earlier representation which was considered and orders have been passed. The only difference that appears to be is the amount which the petitioner claims to have been paid as excess amount is different. In any event, since already the petitioner's representation has been considered and orders passed, the question of issuing a second writ of mandamus to direct the representation to be considered, cannot be acceded to.

5.At this juncture, it will be worthwhile to refer to a decision of the Hon'ble Division Bench of the Bombay High Court in the case of Vijal Marine Services V. Commissioner of Customs & C. Ex., Goa, 2016 (337) E.L.T. 335 (Bom.), wherein the appellant sought for refund of the cost recovery charges paid under protest to the Customs authorities, the Division Bench held that since the appellant therein did not file any appeals against the demands confirmed for the charges/cost, the appellant cannot be allowed to circumvent confirmed demand by way of refund.

6.It appears that the present writ petition is to reopen the earlier proceedings. In this factual background, this Court is not inclined to exercise discretion in issuing a writ of mandamus has sought for by the petitioner. However, this will not prevent the petitioner from pursuing their representation dated 01.02.2017 before the 1st respondent and it is for the 1st respondent to take appropriate decision on such representation.

7.With the above observation, the Writ Petition stands disposed of. No costs.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

Sgl

To

1.Chief Commissioner of Customs
Custom House, No.60, Rajaji Salai,
Chennai 600 001.

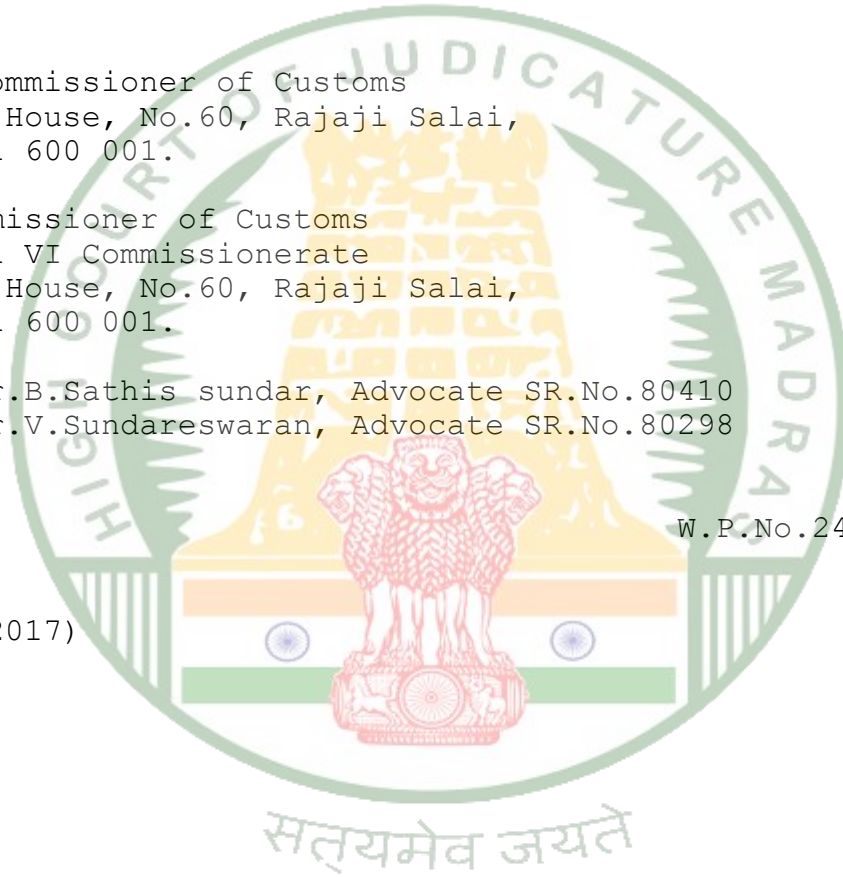
2.The Commissioner of Customs
Chennai VI Commissionerate
Custom House, No.60, Rajaji Salai,
Chennai 600 001.

+1cc to Mr.B.Sathis sundar, Advocate SR.No.80410

+1cc to Mr.V.Sundareswaran, Advocate SR.No.80298

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SV(CO)
GN(30/11/2017)



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