IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.17432 of 2017 and
W.M.Nos.18937 & 18938 of 2017

M/s.P.Perichi Gounder Memorial
Charitable Trust, Rep. By its Trustee,
Dr.L.P.Thangavelu, 545, BKR Nagar,
Coimbatore - 641 012. ... Petitioner

Vs.

1.The Commissioner of Customs,
(Appeals-II), Custom House,
No.60, Rajaji Salai, Chennai - 600 001.

2.The Additional Commissioner of Customs,
(Group-5A), Custom House,
No.60, Rajaji Salai, Chennai - 600 001.

3.The Assistant Commissioner of Customs,
(Group-5A, 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 CERTIORARIFIED MANDAMUS calling for the records of the respondents in File No.S59/50/2017 Group-5B and File No.C3-II/294/O/2017-SEA leading to issuance of the Order in Original No.55355/2017 dated 11.05.2017 and consequential Order in Appeal in C.Cus.II.No.393/2017 dated 24.05.2017 and quash th same and further direct the third respondent to release the goods imported vide Bills of Entry No.8668059 dated 24.02.2017.

For Petitioner : Dr.S.Krishnanadh

For Respondents : Mr.B.Rabu Manohar,
Senior Panel Counsel

O R D E R

Heard Dr.S.Krishnanadh,learned counsel for the petitioner and Mr.B.Rabu Manohar, learned Senior Panel Counsel for the respondents. With the consent on either side the writ petition itself is taken up for disposal.

2. The petitioner is before this Court challenging an order passed by the Commissioner of Customs (Appeals-II), dated 24.05.2017, affirming the order passed by the Additional Commissioner of Customs (Group-5A), dated 11.05.2017. By the impugned orders, the consignment which was imported by the petitioner viz., Used Baxter Aurora Dialysis Machine with supplies and accessories were held to be liable for confiscation with an option to redeem the same for re-export on payment of fine of Rs.2,00,000/- (Rupees Two Lakhs only). The order also imposes penalty of Rs.25,000/- (Rupees Twenty Five Thousand) on the petitioner importer.

3. The learned counsel appearing for the petitioner submitted that during the personal hearing held by the second respondent, the Original Adjucating Authority, was fully convinced that the equipment imported by the petitioner are not life saving equipment nor critical care equipment and though the authority perused the Chartered Engineer certificate dated 17.03.2017 which clearly certify that there is no e-waste and hazardous items noticed in the consignment and also made a file noting to the said effect, when he passed the impugned order dated 11.05.2017, the goods were directed to be absolutely confiscated with an option to redeem the same for re-export. It is further submitted that the issue was pointed out before the Appellate Authority with a request to the Appellate Authority to call for the original file and peruse the same. However, the Appellate Authority failed to do so and merely confirmed the order passed by the Original Authority. Though such contentions have been raised by the petitioner, these are all issues which the petitioner should agitate before the CESTAT as the petitioner has an effective and efficacious alternate remedy before the Tribunal.

4. The learned counsel would also submit that the petitioner is not averse in approaching the Tribunal but considering the time taken by the Tribunal to dispose of the main matter, the petitioner would be put to prejudice and the consignment being a live consignment, it would virtually be reduced to scrap if it is allowed to lie in the Port. However, this reason may not be a full justification for by-passing the appeal remedy before the Tribunal.

5. Therefore, this Court is not inclined to entertain the writ petition as against the impugned orders. Since the

petitioner apprehends that if appeal is preferred before the Tribunal, it may take considerable time for the appeal to be disposed of, the petitioner can always pray for interim direction from the Tribunal more so when they state that identical equipment was imported through the Chennai Port earlier and there is no reason for the respondents 1 and 2 to take a different stand in respect of the petitioners' consignment. In the event the petitioner moves for any interim direction before the Tribunal, the Tribunal may consider hearing the same at the earliest possible time.

6. With the above observations, this writ petition stands disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

abr

To

1.The Commissioner of Customs,
(Appeals-II), Custom House,
No.60, Rajaji Salai, Chennai - 600 001.

2.The Additional Commissioner of Customs,
(Group-5A), Custom House,
No.60, Rajaji Salai, Chennai - 600 001.

3.The Assistant Commissioner of Customs,
(Group-5A, Custom House,
No.60, Rajaji Salai, Chennai - 600 001.

+1cc to M/S.B.Sathish Sundar, Advocate, S.R.No.47971
+1cc to M/s.B.Rabu Manohar, Advocate, S.R.No.47601

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AR(CS IV)
CU(13/07/2017)