

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.28672 of 2017 & W.M.P.No.30850 of 2017

Mr.S.Ashwin Kumar,
Proprietor of M/s.Ashwin & Co.,
rep. by its Power of Attorney,
Mr.D.Deenan,
No.3/2, 3rd Street, Nadukuppan,
Triplicane, Chennai-600 005. ... Petitioner

Vs.

- 1.The Commissioner of Customs,
Chennai-III (SIIB), Custom House,
No.60, Rajaji Salai, Chennai-600 001.
- 2.The Commissioner of Customs,
Chennai-IV, Custom House,
No.60, Rajaji Salai, Chennai-600 001.
- 3.The Additional Commissioner of Customs,
Chennai-IV, Custom House,
No.60, Rajaji Salai, Chennai-600 001.
- 4.The Deputy Commissioner of Customs
(SIIB, IPR-CELL), Custom House,
No.60, Rajaji Salai, Chennai-600 001 ... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus, to direct the respondents herein to permit the petitioner to re-export the goods viz., 156 cartons of Ladies Purse and 309 cartons of Copy Shoes, imported vide Bill of Entry No.2541969, dated 21.07.2017, and Bill of Lading No.961220627.

For Petitioner : Mr.A.K.Jayaraj

For Respondents : Mr.B.Rabu Manohar, SPC

O R D E R

Heard Mr.A.K.Jayaraj, learned counsel appearing for the petitioner and Mr.B.Rabu Manohar, learned Senior Panel Counsel appearing for the respondents.

2.The petitioner seeks for issuance of Writ of Mandamus to permit them to re-export the goods viz., 156 cartons of ladies purse and 309 cartons of copy shoes, imported vide Bill of Entry No.2541969, dated 21.07.2017.

3.It appears that these containers were detained for the purpose of verifying the goods, as to whether they are genuine branded products or otherwise. In the meantime, the IPR right holders have exercised their rights and filed appropriate application under the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007.

4.The petitioner's contention is that though such application is filed, they have not joined the proceedings within the time stipulated under Rule 7(3) of the IPR Rules. However, the written instructions given by the Department to the learned Senior Panel Counsel show that the bond and Bank guarantee were filed by the IPR right holders as early as in October 2017, which is valid till 25.09.2019. Furthermore, the written instructions clearly state that the IPR right holders have joined the proceedings. Therefore, this Court is not inclined to issue the direction as sought for by the petitioner in this writ petition.

5.Learned counsel for the petitioner in the course of arguments submitted that the petitioner has given a representation dated 12.10.2017, clearly setting out their grievance and also submitted that there are certain products, where there is no IPR Rule violations and the petitioner may be permitted to re-export those products.

6.However, I find that the representation dated 12.10.2017, covers the entire consignment and therefore, this Court is not inclined to issue direction based on such representation. However, liberty is granted to the petitioner to approach the Department for necessary relief.

7. Accordingly, this writ petition is dismissed. However, this order will not stand in the way of the petitioner approaching the Department for release of the unbranded articles for the purpose of re-export and if the same is submitted, it shall be considered in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1. The Commissioner of Customs,
Chennai-III (SIIB), Custom House,
No.60, Rajaji Salai, Chennai-600 001.
2. The Commissioner of Customs,
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4. The Deputy Commissioner of Customs
(SIIB, IPR-CELL), Custom House,
No.60, Rajaji Salai, Chennai-600 001.

+1 cc to M/s.Rabu Manohar Advocate sr 84608

+1 cc to M/s.A.K.Jayaraj Advocate sr 84612

W.P.No.28672 of 2017

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