IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.19308 of 2017 & W.M.P.Nos.20811 & 29609 of 2017

M/s.The State Trading Corporation of India Ltd.,
Having its registered office at Jawahar Vyapar
Bhavan, Tolstoy Marg, New Delhi-110 001.
Having its Branch Office at STC Trade Centre,
A-29, Thiru Vi Ka Industrial Estate,
Guindy, Chennai-600 032. ... Petitioner

Vs.

1.Commissioner of Customs,
Office of the Commissioner of Customs,
Chennai-II, Custom House,
No.60, Rajaji Salai, Chennai-600 001.

2.M/s.Haji Sattar & Sons,
Ground Floor, New No.58, Old No.81/1,
Acharappan Street, Chennai-600 001. ... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, to call for the records pertaining to the impugned Order-in-Original No.54955/2017 dated 17.04.2017 passed by the first respondent and quash the same as far as the petitioner is concerned.

For Petitioner : Mr.V.Bhiman
for M/s.Sampathkumar & Associates

For Respondents : Mr.V.Sundareswaran, for R1
Senior Standing Counsel
No appearance for R2

O R D E R

Heard Mr.V.Bhiman, for M/s.Samapthkumar and Associates, learned counsel for the petitioner and Mr.V.Sudareswaran, learned Senior Standing Counsel for the first respondent. None appears for the second respondent. With consent on either side, this writ petition is taken up for final disposal.

2.It was reported before this Court on the earlier hearing that the second respondent has been declared as insolvent and the estate is now vested with the official assignee.

3.Learned counsel for the petitioner would submit that the petitioner is a canalising agent and cannot be held liable to pay the amount as demanded in the impugned order dated 18.04.2017.

4.After hearing the learned counsel on both sides for a considerable length of time, this Court finds no reason to adjudicate the correctness of the impugned order. It may not be necessary for this Court to go into the disputed questions of fact, which obviously cannot be and should not be done in a writ petition, especially when there is an adequate effective alternate remedy available to the petitioner under the provisions of the Customs Act. In terms of Section 129 A(1) of the Customs Act, the petitioner has an appellate remedy before the CESTAT. Therefore, the petitioner has to necessarily avail the said remedy instead of approaching this Court by way of a writ petition.

5.Learned counsel for the petitioner would point out that the impugned order was passed on 18.04.2017, and as of now, if an appeal is filed, it would be time barred. Considering the fact that the petitioner is a Government of India Corporation, and also due to the fact that the second respondent has been declared as insolvent, this Court deems it appropriate that it can exercise discretion in the case and grant time within which the petitioner can file an appeal before the CESTAT. Accordingly, while declining to entertain the writ petition, liberty is granted to the petitioner to file an appeal before the CESTAT and if such appeal is filed within a period of thirty days from the date of receipt of a copy of this order, the Tribunal is directed to entertain the appeal without reference to limitation.

Accordingly, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

abr

To
The Commissioner of Customs,
Office of the Commissioner of Customs,
Chennai-II, Custom House,
No.60, Rajaji Salai, Chennai-600 001.

+1 CC to Mr. Sampath Kumar, advocate sr 76883.
+1 Cc to Mr.V. Sundareswaran, Advocate sr 77043.

W.P.No.19308 of 2017

SP(03/11/2017)