IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.08.2017

CORAM

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

W.P.No.19376 of 2017
and
W.M.P.No.20886 of 2017

B.V.Leathers, Rep. by its Manager
D.Chandrasekar ... Petitioner

Vs.

1. The Principal Commissioner of Customs - III (SIIB)
   Custom House,
   Chennai-600 001.

2. The Commissioner of Customs,
   Chennai IV Commissionerate,
   Custom House,
   Chennai-600 001.

3. Deputy Commissioner of Customs (SIIB)
   Custom House,
   Chennai-600 001.

4. Deputy Commissioner of Customs (Exports)
   Chennai IV Commissionerate,
   Custom House,
   Chennai-600 001.

5. Customs, Excise & Service Tax Appellate Tribunal,
   South Zonal Bench, Shastri Bhavan Annexe,
   Haddows Road, Chennai. ... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents to release the goods covered by shipping bill No.1466900 dated 05.10.2016, forthwith for export.

For Petitioner : Mr.V.Pramila

For Respondents: Mr.K.S.Ramasamy, SPC

ORDER

Heard the learned counsel for the petitioner and the learned Senior panel Counsel for the respondents.

2. The petitioner has filed this writ petition for a direction to the respondents to release the goods covered by shipping bill No.1466900 dated 05.10.2016, forthwith for export.

3. The petitioner seeks appropriate direction, so that the goods can be exported and in that regard, reliance was placed on the order passed by the Commissioner of Customs, Commissionerate IV, Chennai dated 23.11.2016 passed in the case of Sri.Vijayalakshmi Leathers. This order was put to challenge by the said exporter by filing W.P.No.43062 of 2016, which was tagged along with other connected matters, where the other exporters were attempting to export similar type of goods.

4. The petitioners therein were aggrieved by certain conditions imposed by the Commissioner of Customs, while ordering for provisional release vide order dated 23.11.2016. The condition imposed by the Commissioner in the said order is as under :

> "......6. The Principal Commissioner of Customs (III) has recommended for provisional release of the said consignments in respect of the above ten shipping bills as above in terms of Board Circular No.01/2011-Cus dated 04.1.2011 (copy enclosed) with the following conditions :
>
> (i) on payment of appropriate export duty;
>
> (ii) on execution of bond for the value of the goods and appropriate security for fine and penalty leviable;
>
> (iii) after adequate numbers of samples as required including for possible prosecution may be taken/collected before such provisional release.
>
> 7. In view of the Pr. Commr-III's instructions, it is informed that if the exporters avail the option for provisional release of the goods, the same may be communicated to SIIB before according 'Let Export Order' to enable the SIIB to draw samples as instructed.
>
> 8. The copies of relevant shipping bills and other connected documents are hereby forwarded to you for taking further action. Further, additional bond may also be taken from the exporters that they shall not claim the benefits of Chapter 3 of Foreign Trade Policy (copy enclosed)."

5. Thus, the petitioners therein did not have any objection with regard to Clauses 6(ii) and (iii), 7 and 8, but were aggrieved by Clause 6(i) where the Commissioner directed the provisional release subject to payment of appropriate export duty. This Court tested the correctness of the submissions of those petitioners and passed an order on 22.12.2016 by directing

the provisional release of the subject goods by relaxing the rigor of the condition contained in Clause 6(i) of the order dated 23.11.2016. The relaxation, which was allowed by this Court, was by substituting Clause 6(i) with an option being given to those petitioners to seek for release of subject goods/ consignments by furnishing bank guarantee of a nationalized bank equivalent to 30% of export duty. This is so, as finished leather, as per the extent policy, is freely exportable, while, generally, unfinished leather i.e. hides, skins, leather - tanned and untanned, are subject to export duty at the rate of 60%. It was made clear that the other conditions contained in Clauses 6, 7 and 8 of the order dated 23.11.2016 passed by the Commissioner remain unaltered.

6. It appears that when those petitioners sought for provisional release of the goods pursuant to the order passed by the Court dated 22.12.2016, the Department is still insisting upon furnishing of bank guarantee for the penalty amount, etc. Therefore, once again, the petitioners approached this Court by filing W.P.Nos.1620 to 1628 of 2017 challenging the subsequent order dated 10.1.2017 passed by the Commissioner to direct the release of the goods. This Court, after taking into consideration its earlier order, disposed of the writ petitions by order dated 25.1.2017 observing that seeking security in the form of bank guarantee is uncalled for and in a sense, dilutes the very essence of the order dated 22.12.2016 passed by this Court in W.P.Nos.43062 to 43070 of 2016, as the respondents, in the earlier round, had not articulated before the Court that they would be requiring security towards fine and penalty in the form of bank guarantee.

7. Therefore, that part of the order dated 10.1.2017 requiring furnishing of security in the form of bank guarantee was directed to be stayed. Further, the communication requiring the petitioners therein to describe the subject goods as 'unfinished goods' was also stayed and the respondents were also directed to release the goods forthwith upon fulfillment of the conditions stipulated in the order dated 22.12.2016. Subsequently, the matter was listed for reporting compliance and by order dated 30.1.2017, the writ petitions were closed.

8. The learned counsel for the petitioner would submit that the case of the petitioner herein is not different from the earlier cases, which were disposed of by this Court and the conditional order was complied with by the petitioners. Therefore, learned counsel sought for similar order in this writ petition as well.

9. The learned Senior panel counsel taking notice for the respondents, while resisting the plea, would contend that as against the order passed by this Court on 25.1.2017 in

W.P.Nos.1620 to 1628 of 2017, writ appeals have been preferred and as there was a delay in filing the appeals, the matters are in the process of being listed. Therefore, the order passed in the earlier writ petitions should not be made applicable to the present case.

10. As on date, the order dated 22.12.2016 or the subsequent order dated 25.1.2017, passed in W.P.Nos.43062 to 43070 of 2016 and W.P.Nos. 1620 to 1628 of 2017 respectively have not been stayed, altered or modified. Rather, the Department has complied with the directions issued in those writ petitions, which are identical cases to that of the present case. Thus, this Court is of the view that there is no distinction placed by the Revenue to take a different stand in this case.

11. Accordingly, the writ petition is disposed of by directing the respondents to grant provisional release of the goods subject to the petitioner complying with the conditions imposed by this Court in W.P.Nos.43062 to 43070 of 2016 and W.P.Nos.1620 to 1628 of 2017 respectively dated 22.12.2016 and 25.01.2017. The above direction shall be complied with within a period of one week from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

at/rk

To

1. The Principal Commissioner of Customs - III (SIIB)
Custom House,
Chennai-600 001.

2. The Commissioner of Customs,
Chennai IV Commissionerate,
Custom House,
Chennai-600 001.

3. Deputy Commissioner of Customs (SIIB)
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   Chennai IV Commissionerate,
   Custom House,
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5. Customs, Excise & Service Tax Appellate Tribunal,
   South Zonal Bench, Shastri Bhavan Annexe,
   Haddows Road, Chennai.

+1cc to Mr.K.S.Ramaswamy,Advocate sr.56051

+2cc to Mrs.V.pramila,Advocate sr.56114

W.P.No.19376 of 2017 and
W.M.P.No.20886 of 2017

ss(9/8/2017)