

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.07.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.19459 of 2017

M/s.Merino Impex,
Rep. by its Proprietor,
Shri Aslam Mohamed Azeez,
No.15, South Madha Church Street,
Royapuram, Chennai - 600 013. ...Petitioner

Vs.

- 1.The Commissioner of Customs,
Chennai III, 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 Deputy Commissioner of Customs,
Docks Intelligence Unit, Custom House,
No.60, Rajaji Salai, Chennai - 600 001.
- 4.The Deputy Commissioner of Customs,
EDC, Custom House,
No.60, Rajaji Salai,
Chennai - 600 001. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue Writ of Mandamus to direct the respondents to cancel and return the Bond and Bank Guarantee executed for an amount of Rs.37,11,000/- requested for vide the petitioner's communication dated 08.03.2017.

For Petitioner : Mr.B.Sathish Sundar
For Respondent : Mr.V.Sundareswaran,
Senior Panel Counsel.

O R D E R

Heard Mr.B.Sathish Sundar, learned counsel for the petitioner and Mr.V.Sundareswaran, learned Senior Panel Counsel for the respondents.

2.With the consent of learned counsel on either side, the writ petition itself is taken up for disposal.

3.The petitioner has filed this writ petition praying for issuance of a direction upon the respondents to cancel and return the bond and bank guarantee executed for an amount of Rs.37,11,000/- by considering their representation dated 08.03.2017.

4.The petitioner's case is that during the course of business, they have filed two shipping bills under the claim for drawback. The officers attached to the third respondent visited the Container Freight Station where the goods were kept and drawn samples from the consignment, after which the petitioner sent a letter dated 10.06.2015 to the third respondent stating that there was an apparent mistake in classifying the goods under export and requested that the samples may be tested to ascertain the correct composition of the goods to decide the correct classification for the purposes of claim for drawback. The samples were forwarded to the Regional laboratory, Textile Committee, Chennai, for testing.

5.The petitioner's case is that there was a threat that the overseas buyers would cancel the order and therefore, by letter dated 07.08.2015, requested for provisional release of the goods in terms of Section 110A of the Customs Act, 1962. It is submitted that a General Provisional Release Bond and a bank guarantee for Rs.37,11,000/- were furnished by the petitioner and they were permitted provisional release of the goods. Since by then the overseas supplier had cancelled the order, the petitioner sought permission of the respondents to "shut out" the cargo and take back the goods. Consequently, the petitioner is said to have been permitted to "shut out" the cargo and take the goods vide permission dated 30.09.2015. In the background of these facts, the petitioner has sought for return of the bank guarantee and cancellation of the bond.

6.However, it is seen that in the meantime, a show cause notice has been issued to the petitioner dated 21.06.2017, calling upon the petitioner to explain as to why the declared "FOB" values of the shipping bills should not be rejected; why the value of the goods pertaining to the shipping bills should not be redetermined; why the claims of drawback should not be rejected and redetermined and why the classification of the

goods should not be altered etc. On receipt of the show cause notice, the petitioner has submitted an interim reply on 06.07.2017, through their counsel which is pending consideration of the third respondent viz., the Deputy Commissioner of Customs. In the background of these facts, the petitioner now seeks for return of the bank guarantee furnished by them.

7.Considering the fact that already a show cause notice has been issued to the petitioner, the question of issuing a positive direction to the respondents to return the bank guarantee or to cancel the bond cannot be granted. Thus, the petitioner should submit to the jurisdiction of the respondents and participate in the adjudication process of the show cause notice.

8.For the above reasons, this writ petition is dismissed, leaving it open to the petitioner to participate in the adjudication proceedings before the fourth respondent, by raising all contentions which are available to them on facts as well as law. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

abr

To

- 1.The Commissioner of Customs,
Chennai III, Custom House,
No.60, Rajaji Salai, Chennai - 600 001.
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- 4.The Deputy Commissioner of Customs,
EDC, Custom House,
No.60, Rajaji Salai, Chennai - 600 001.

+ 1 cc to Mr.B. Sathish Sundar, Advocate Sr.54188
+ 1 cc to Mr.V.Sundareswaran, Advocate Sr.53899

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EU 17.08.17