IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.08.2017

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THE HONOURABLE MR.JUSTICE **T.S.SIVAGNANAM**

W.P.No.19767 of 2017

M/s.Kanishka Enterprises
48/87, Linghi Chetty Street,
Mannaday, Chennai - 600 001
by its Authorised signatory
G.Shankarlingam ...Petitioner

Vs

1.The Assistant Commissioner of Customs (Gr.7H)
No.60,Rajaji Salai, Custom House,
Chennai - 600 001.

2.The Additional Director
Directorate of Revenue Intelligence
G.N.Chetty Road, T.Nagar,
Chennai - 600 017. ...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the first respondent herein to implement his order dated 16.06.2017 allowing provisional release of goods mentioned to therein concerning the Bill of Entry No.9323907 dated 17.04.2017 u/s.110 A of the Customs Act.

For Petitioner : Mr.S.Baskaran

For Respondents : Mr.K.Ravi
Senior Panel Counsel for R1
Mr.V.Sundareswaran for R2

O R D E R

Heard Mr.S.Baskaran, learned counsel for the petitioner, Mr.K.Ravi, learned Senior Panel Counsel for the first respondent and Mr.V.Sundareswaran, learned counsel for the second respondent.

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

3. The petitioner seeks for a direction upon the first respondent to implement the order, dated 16.06.2017, permitting provisional release of goods mentioned in the Bill of Entry No.9323907 dated 17.04.2017. The first respondent has imposed the following three conditions to be complied with for provisional release of the goods imported in the said Bill of Entry:-

a) On payment of duty amount of Rs.1512289/- on the re-determined value as per SIIB report

b) Furnishing of a Bank Guarantee for 30% of the differential duty of Rs.460000/- and

c) Execution of a personal Bond for the total value of the goods i.e, for Rs.5105681/-

4. The learned counsel for the petitioner submitted that the conditions imposed in Clause (b) and (c) above have been complied with. However, when the petitioner went to remit duty, as directed in Clause (a) , the first respondent informed that they have received intimation from the second respondent viz., Directorate of Revenue Intelligence (DRI) not to release the cargo. Therefore, the petitioner seeks for implementation of the order of provisional release of goods, by contending that it is a statutory order and requires to be implemented by the first respondent.

5. The learned counsel for the second respondent submitted that extensive investigation is being done by the DRI not only in respect of petitioner's goods, but also other 26 containers, which are said to have imported assorted goods from China. Therefore, if any direction is issued by the first respondent for provisional release of goods, it will hamper the investigation.

6. The submission made by the learned counsel for the second respondent could have been accepted if the first respondent has not exercised his statutory powers and granted provisional release. As long as the order passed by the first respondent remains intact, the second respondent cannot sit

in judgment over the order of the first respondent. However, this Court is conscious of the fact that because of the provisional release, the ongoing investigation should not be hampered.

7. In the light of the above, there will be a direction to the first respondent to provisionally release the goods in terms of the order dated 16.06.2017, after accepting the payment of duty amounting to Rs.1512289/- on the re-determined value as per SIIB report and on re-verifying the Bank Guarantee and Personal Bond filed by the petitioner, within a period of 10 days from the date of receipt of a copy of this order. By then, it is open to the second respondent to examine the cargo imported by the petitioner, which is sought to be cleared by the said Bill of Entry.

The writ petition stands disposed of accordingly. No costs.

10.08.2017

Speaking/Non-speaking order
Index : Yes/No

Note : Issue the order on 11.08.2017
svki

To

1.The Assistant Commissioner of Customs (Gr.7H)
No.60,Rajaji Salai, Custom House,
Chennai - 600 001.

2.The Additional Director
Directorate of Revenue Intelligence
G.N.Chetty Road, T.Nagar,
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T.S.SIVAGNANAM,J

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