

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.09.2017

CORAM

THE HONOURABLE MR. JUSTICE T.S. SIVAGNANAM

W.P. No. 10969 of 2004

&

W.P.M.P. No. 12872 of 2004 & W.V.M.P. No. 1372 of 2004

M/s. Krishna Creations,
7th Floor, Fountain Plaza,
Pantheon Road,
Egmore, Chennai - 600 008.

rep. by its Partner
Mr.Sitaram Goenka

..Petitioner

Vs.

1. Commissioner of Customs,
Custom House,
35, Rajaji Salai,
Chennai - 600 001.

2. Joint Commissioner of Customs,
(Warehouse and Disposals),
O/o. The Commissioner of Customs,
"Custom House",
35, Rajaji Salai,
Chennai - 600 001.

3. Murray & Co.,
340, Thambu Chetty Street,
Chennai - 600 001.

4. INDEV
25, Elanchavadi Village
(Near Andarkuppam Checkpost),
Ponneri High Road,
New Manali,
Chennai - 103.

..Respondents

Prayer: Petition under Article 226 of the Constitution of India
praying for issue of a Writ of Mandamus to direct the 2nd
respondent to return the Earnest Money Deposit (EMD) of
Rs.1,62,000/- to the petitioner.

For Petitioner :: Ms. Geetha Rajasekar

For Respondents:: Mr.S. Rajasekar
Senior Panel Counsel for
R1 & R2
No appearance for
R3 & R4

O R D E R

Heard Ms. Geetha Rajasekar, learned counsel for the petitioner and Mr.S. Rajasekar, learned Senior Panel Counsel for respondents 1 and 2. Though notice has been served on the 3rd respondent and their name is also printed in the cause list, none appears for the 3rd respondent. Though the name of the counsel for the 4th respondent is printed in the cause list, there is no appearance on behalf of the 4th respondent also.

2. The petitioner seeks issuance of a Writ of Mandamus directing the 2nd respondent to return the Earnest Money Deposit of Rs. 1,62,000/- to the petitioner. The petitioner participated in the public auction conducted by Professional Auctioneers, namely, the 3rd respondent, on behalf of the Customs Department, in respect of Lot No. 315 consisting of decorative wares, gift articles and other miscellaneous items. In the auction conducted on 31.10.2003, the petitioner offered the highest bid of Rs.16,20,000/-, which was accepted by the 1st respondent on 10.11.2003 and conveyed to the auctioneers on the same day. The petitioner had paid the mandatory Earnest Money Deposit of Rs.1,62,000/- on the date on which the auction was conducted. The lot for which the petitioner had submitted their bid consisted of one 40 feet container with approximately 858 carton boxes containing hundreds of small gift articles of varied description. Since it was not practically possible to give description of each and every article contained therein, the Department has given a general description to the articles as decorative wares, gift articles and miscellaneous goods. The petitioner, with their eyes wide open, participated in the auction and offered their bid and was declared as the highest bidder. After such declaration was made, the petitioner promptly remitted the Earnest Money Deposit as well and therefore, the petitioner was required to pay the balance amount for which the petitioner sought for extension of time. The request of the petitioner was obliged and time was extended upto 08.12.2003. The petitioner was intimated in no uncertain terms that if they do not pay the balance sale value on or before 08.12.2003, the Earnest Money Deposit will be forfeited, as per condition No. (6) of the Conditions of Sale.

3. Subsequently, the petitioner sent a letter on 03.12.2003 stating that they were not given a detailed inventory of the list of every box in Lot No. 315. Respondents 1 and 2 had stated that it is impossible for all purposes, as there were 858 carton boxes inside the 40 feet container and the goods were sold in the auction in "as is where is" condition and with full knowledge, the petitioner had participated in the auction and therefore, respondents 1 & 2 rejected the petitioner's letter dated 03.12.2003 as an afterthought. Now, the petitioner is before this Court seeking issuance of Writ of Mandamus to refund the forfeited Earnest Money Deposit.

4. Firstly, the nature of transaction entered into between the petitioner, Customs Department and the Professional Auctioneers is a private contract and merely because, goods were auctioned, for and on behalf of the Customs Department, the same cannot be construed as a statutory contract so as to make the provisions amenable to the jurisdiction of this Court under Article 226 of the Constitution of India.

5. In the considered view of this Court, the demand made by the petitioner is purely an afterthought, because at no particular point of time, the petitioner sought for a detailed inventory list and with full knowledge, having participated in the auction and having been declared as the highest bidder and remitted the Earnest Money Deposit, the present attempt of the petitioner is to, somehow, wriggle out of the transaction and at the same time, to get back the Earnest Money Deposit. The prayer sought in the writ petition is thoroughly misconceived and the writ petition is not maintainable. Hence, the writ petition fails and the same is dismissed. No costs. Connected W.P.M.P. & W.V.M.P. are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

nv/sai

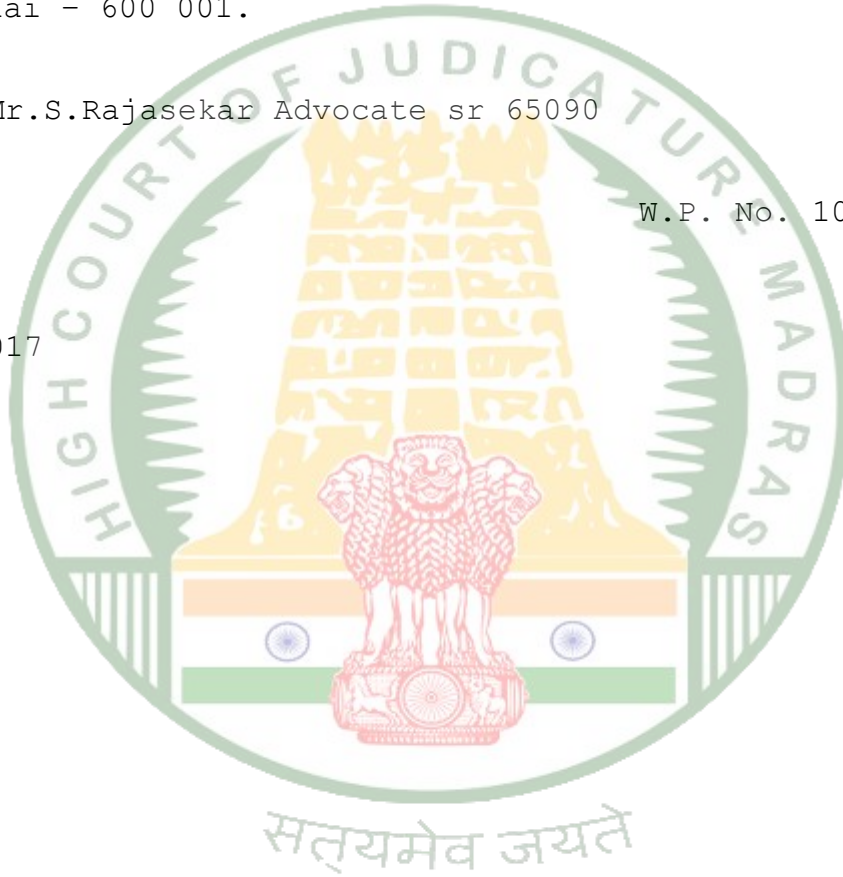
To

1. Commissioner of Customs,
Custom House,
35, Rajaji Salai,
Chennai - 600 001.
2. Joint Commissioner of Customs,
(Warehouse and Disposals),
O/o. The Commissioner of Customs,
"Custom House",
35, Rajaji Salai,
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+1 cc to Mr.S.Rajasekar Advocate sr 65090

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