

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.09.2017

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.38070 of 2016

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W.M.P.Nos.32628 & 32629 of 2016

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W.M.P.Nos.35317 & 35318 of 2016

M/s.Junaid Plaster of Paris Proprietary Firm,
Rep. by its Shri Ayub Khan,
No.4, A.S.Tower, Opp.Adugodi Post Office,
BTS Main Road, Bangalore-560 030. ... Petitioner

Vs.

1. The Chief Commissioner of Customs,
Custom House,
No.60, Rajaji Salai, Chennai-600 001.
2. The Commissioner of Customs,
Chennai II Commissionerate,
No.60, Rajaji Salai, Chennai-600 001.
3. The Deputy Commissioner of Customs,
IPR Cell, Chennai II Commissionerate,
No.60, Rajaji Salai, Chennai-600 001.
4. M/s.Radha Decors, Rep. by its Proprietor,
Shri G.R.Kaliyaperumal,
Near, No.105/6, Lawspet Main Road,
(Pethuchetipet, Police Station)
Lawspet, Puducherry-605 008. ... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the first to third respondents herein to cause release of the goods viz., Architectural Gypsum Mouldings Products Cornices covered under Bill of Entry No.6533511 dated 29.08.2016.

For Petitioner : Mr.B.Sathish Sundar
For Respondents : Mr.A.P.Srinivas,
Senior Panel Counsel
for R1 to R3
Mr.A.Venkatesan for R4

O R D E R

Heard Mr.B.Sathish Sundar, learned counsel for the petitioner, Mr.A.P.Srinivas, learned Senior Panel Counsel for respondents 1 to 3 and Mr.A.Venkatesan, learned counsel for the fourth respondent.

2.The petitioner in this writ petition seeks for issuance of Writ of Mandamus, to direct respondents 1 to 3 to cause release of the goods viz., Architectural Gypsum Mouldings Products Cornices, covered under Bill of Entry No.6533511, dated 29.08.2016.

3.The reason for detention of the cargo was on account of objection lodged by the fourth respondent on the ground that he holds a patent for the said product imported by the petitioner. The objection given by the fourth respondent was registered by the Department under the relevant rules and the fourth respondent submitted a bond for a total value of Rs.5,72,887/- and Security (bank guarantee) for a total value of Rs.1,43,222/-. The fourth respondent's case rested upon a patent granted by the patent office in his favour in respect of the product, which has been imported by the petitioner. During the pendency of the matter, the Deputy Controller of Patents & Designs by order dated 09.08.2017 has revoked the patent granted to the fourth respondent/patentee.

4.Thus, as on date, the basis for registering an objection for import of the products would not be maintainable at the hands of the fourth respondent. In a connected matter, when similar objection was raised by the fourth respondent, since the fourth respondent failed to join the proceedings, the third respondent has suspended the objections given by the fourth respondent and the Court taking note of the said fact has directed the release of those consignments. In the instant case, since the patent granted to the fourth respondent has been revoked, they cannot maintain an objection under the IPR Rules for import of the said product.

5.The learned counsel appearing for the fourth respondent submitted that appropriate direction may be given to the third respondent for cancelling the bond and returning the bank guarantee.

6.The learned Standing Counsel for the Department would submit that for the purpose of cancelling the bond and returning the bank guarantee, proper procedures under the relevant rules have to be followed and under the rules, the authorities are entitled to get certain amounts as costs. In the instant case,

the fourth respondent did join the proceedings and there was a bond executed and security furnished. Though, the objection of the fourth respondent is no longer sustainable, their request for release of the bond and the bank guarantee furnished should be considered as per the relevant Rules.

7. Since the consignment has been detained on an objection raised by the fourth respondent and it is now ordered to be released, the petitioner is entitled for detention certificate for the entire period of detention, that is, from the date of detention till the date it is cleared by the petitioner. Equally so, the petitioner is entitled for certificate for waiver of demurrages for the said period.

8. Accordingly, this writ petition is disposed of with the following directions;

(i) The respondents 2 & 3 are directed to release the consignment covered under Bill of Entry No.6533511 dated 29.08.2016 within a period of two weeks from the date of receipt of a copy of this order.

(ii) The respondents 2 & 3 are directed to issue a detention certificate and a certificate for waiver of demurrages for the entire period of detention that is the date of detention till the date the petitioner clears the cargo.

(iii) The third respondent is directed to pass appropriate orders for revoking the bond furnished by the petitioner in accordance with relevant rules and while doing so, shall take note of the fact that the patent granted to the fourth respondent/patentee was revoked on 09.08.2017, consequent upon which the fourth respondent's objections became unsustainable.

No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

सत्यमेव जयते
Assistant Registrar (CS IV)

//True Copy//

Sub Assistant Registrar

abr

To

1. The Chief Commissioner of Customs,
Custom House,
No.60, Rajaji Salai, Chennai-600 001.

2. The Commissioner of Customs,
Chennai II Commissionerate,
No.60, Rajaji Salai, Chennai-600 001.

3. The Deputy Commissioner of Customs,
IPR Cell, Chennai II Commissionerate,
No.60, Rajaji Salai, Chennai-600 001.

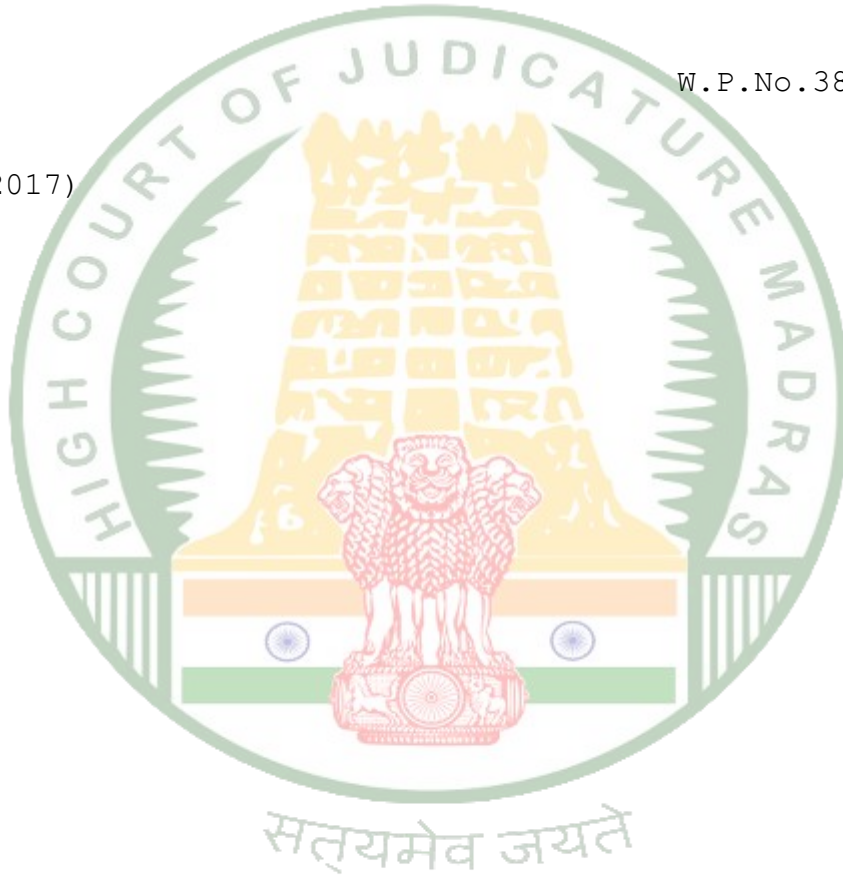
+2cc's to Mr.B.Sathish Sundar, Advocate, S.R.No.69633

+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.69619

+1cc to Mr.A.Venkatesan, Advocate, S.R.No.69703

W.P.No.38070 of 2016

CS IV
CA(13/10/2017)



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