

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.40570 of 2016

and

WMP.Nos.34572 and 34573 of 2016

M/s.Junaaid Interior Design,
Proprietary firm

Rep. By its Proprietor Shri Ansar Khan,
No.1/25, 9th Main, Yarab Nagar,
Banshankari 2nd stage,
Bangalore - 560 070.

.... Petitioner

Vs.

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

2.The Commissioner of Customs,
Chennai II Commissionerate,
No.60, Rajaji Salai,
Chennai - 1.

3.The Deputy Commissioner of Customs,
IPR Cell, Chennai II Commissionerate,
No.60, Rajaji Salai,
Chennai - 1.

4.M/s.Radha Decors,

Rep. By its Proprietor Shri G.R.Kaliyaperumal,
No.105/6, Lawspet Main Road,
(Pethuchetipet Police Station)
Lawspet, Puducherry - 605 008.

... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India praying to issue Writ of mandamus to direct the respondents 1 to 3 herein to cause assessment and release of the goods viz. Architectural Gypsum Mouldings Products Cornices covered under the Bill of Entry No.6885665, dated 27.09.2016 and Bill of Entry No.7285334, dated 31.10.2016.

For Petitioner : Mr.B.Satish Sundar

For R1 to R3 : Dr.S.Seethalakshmi

ORDER

Heard Mr.B.Satish Sundar, learned counsel for the petitioner and Dr.S.Seethalakshmi, learned counsel for the respondents 1 to 3. Though fourth respondent has been served and their name is printed in the cause list, none appears for them.

2. The petitioner has filed this writ petition praying for a direction upon the third respondent, namely, the Deputy Commissioner of Customs, IPR Cell, Chennai, to cause assessment and release the goods covered under Bill of Entry No.6885665, dated 27.09.2016 and Bill of Entry No.7285334, dated 31.10.2016. It may not be necessary for this Court to make elaborate exercise as to whether there was a justification for detention of consignment on an objection given by the fourth respondent on account of certain subsequent developments.

3. It appears that though the fourth respondent had given an objection alleging that there is an infringement of his intellectual property rights, as he had obtained a patent for the same product, the fourth respondent did not join the proceedings initiated in this regard by the Customs Department. Therefore, the third respondent informed the fourth respondent, who is proprietor of M/s.Radha Decors, that since he has not participated in the proceedings, they are constrained to lift the suspension of clearance in respect of the consignment imported by the petitioner vide Bill of Entry No.7285334, dated 31.10.2016. This Bill of Entry is one of the Bill of Entries which is subject matter of the writ petition. Therefore, so far as this Bill of Entry No.7285334, dated 31.10.2016, the third respondent has to release the same after assessment.

4. One more factor which has to be taken into consideration is that the patent which was granted in favour of the fourth respondent has been revoked by the Deputy Controller of Patents and Designs by order dated 09.08.2017. A copy of the same has been placed before this Court by the learned counsel for the petitioner.

5. Thus, taking note of the letter of the third respondent dated 05.04.2017 and as the fourth respondent has not participated in the proceedings, whatever applies for the goods covered under the Bill of Entry No.7285334, dated 31.10.2016, will equally apply to the consignment covered in the Bill of Entry No.6885665, dated 27.09.2016.

6. Thus, for the above reasons, there will be a direction to the third respondent to cause assessment and release the goods covered in the Bill of Entry No.6885665, dated 27.09.2016 and Bill of Entry No.7285334, dated 31.10.2016, within a period of two weeks from the date of receipt of a copy of this order. Since the detention has been at the instance of the department based on an objection raised by the fourth respondent and the department have lifted the order of suspension atleast in respect of one of the consignments, the petitioner is entitled to Certificate for waiver of demurrage and detention charges for the period from the date on which the goods were detained till it is cleared for the petitioner for home consumption in respect of both consignments.

7. In fine, the writ petition is disposed with the above directions. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Chief Commissioner of Customs,
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Chennai - 1.
- 2.The Commissioner of Customs,
Chennai II Commissionerate,
No.60, Rajaji Salai,
Chennai - 1.
- 3.The Deputy Commissioner of Customs,
IPR Cell, Chennai II Commissionerate,
No.60, Rajaji Salai,
Chennai - 1.

+1 cc to M/s.B.Sathish sundar Advocate sr 68730
+1 cc to Dr.S.Seethalakshmi sr 69086

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