

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.07.2017

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition No.34757 of 2004
and
W.P.M.P.No.41965 of 2004

Sri Sugaveneswara Knitting
Co. Pvt. Ltd.,
Rep. by its Director,
Mr.V.Thiagarajan

...Petitioner

Vs.

1. The Joint Director General of Foreign Trade
6th Floor, C & E Wing,
Kendriya Sandan, Koramangala,
Bangalore - 560 034.

2. The Deputy Commissioner of Customs (EPCG)
Custom House,
Rajaji Salai,
Chennai - 1.

...Respondents

Writ Petition, filed under Article 226 of the Constitution of India, directing the Writ of Certiorarified Mandamus to call for records of the impugned order bearing file No.07/95/199/0114/AM-2004/530, dated 06.09.2004, passed by the first respondent and quash the same as arbitrary and contrary to law, and further direct the 2nd respondent to issue Show Cause Notice in terms of Section 28 of the Customs Act, 1962 for demanding duty and interest, and also incorporating provision for examining the leviability or otherwise of penalty on the petitioner.

For Petitioner : Mr.Derricksan

For Respondents : Mr.G.M.Syed Nurullah Sheriff
Senior Standing Counsel

O R D E R

Heard Mr.Derricksan, the learned counsel appearing for the petitioner, and Mr.G.M.Syed Nurullah Sheriff, learned Senior Standing Counsel for the respondents.

2. The petitioner, in this Writ Petition has challenged the order passed by the first respondent, dated 06.09.2004, and for a direction upon the second respondent to issue a show cause notice under Section 28 of the Customs Act, 1962, demanding duty and interest. So far as the impugned order is concerned, viz., the order passed by the first respondent, dated 06.09.2004, the matter pertains to levy of penalty of Rs.5,00,000/- on the petitioner, for violating the conditions of licence issued under the provisions of Foreign Trade (Development and Regulation) Act 1992, and by importing under duty concession, but not complying with the obligation of export or not producing the evidence of export and refusing to regularize as a case of bonafide default. The penalty has been imposed, in exercise of power conferred under Section 11 (2) of the Foreign Trade (Development and Regulation) Act 1992, read with notification No.18/9/97/ECA-III, dated 20.01.1999, issued by the Director General of Foreign Trade, New Delhi.

3. The learned counsel appearing for the petitioner submits that, as against the impugned order, the petitioner may be permitted to file Appeal and canvass all the points before the Appellate Authority. With regard to the second limb of the prayer, sought for, by the petitioner, it is submitted that the petitioner has paid the duty amount by requesting the Customs Department to encash the bank guarantee furnished by the petitioner, to the tune of Rs.8,75,000/-, and this is shown to have been encashed by the Customs Department. Therefore, it is submitted that, so far as the demand for interest is concerned, the second respondent has issued demand notice, dated 13.09.2004, without issuing any show cause notice. In this connection, it would be beneficial to refer to the provisions contemplated under Section 28 of the Customs Act, and the said Section deals with recovery of duties not levied or short-levied or erroneously refunded. Sub section (1) of 28 states that, where any duty has not been levied, or has been short-levied, or erroneously refunded, or any interest payable, has not been paid, part-paid, or erroneously refunded, for any reason, other than the reasons of collusion, or any wilful mis-statement or suppression of facts, the proper officer shall, within one year from the relevant date, serve notice on the person chargeable with the duty or interest, which has not been so levied, or which has been short-levied, or short-paid, or, to whom the

refund has erroneously been made, requiring him to show cause as to why, he should not pay the amount specified in the notice.

4. The impugned proceedings of the second respondent, dated 13.09.2004, does not show that the show cause notice was issued to the petitioner, prior to the issuance of the same, but only refers to the petitioner's letter, dated 13.09.2004.

5. In the light of the above, the following order would meet the ends of justice.

i) The challenge to the impugned order, dated 06.09.2004, is held to be not maintainable, and therefore, the petitioner is granted liberty to file Appeal before the Appellate Authority, as sought for by them. Accordingly, the Writ Petition is dismissed as not maintainable, as against the impugned order, dated 06.09.2004.

ii) In the event, the Appeal is filed, the Appellate Authority shall exclude the period between 24.11.2004 (viz., the date of filing of this Writ Petition) and till the date of receipt of the copy of this order, for the purpose of computing limitation.

iii) The second respondent is directed to issue a show cause notice within a period of sixty days from the date of receipt of a copy of this order, demanding the interest at the admissible rates.

iv) On receipt of the show cause notice, the petitioner is entitled to submit their reply/objections, and thereafter, the second respondent shall pass a speaking order, and communicate the same to the petitioner. While submitting reply to the show cause notice, the petitioner is not entitled to raise the question of limitation, since the show cause notice has been issued pursuant to the direction issued by this Court, in this order, and the period, from which, this Writ Petition is pending, has to be necessarily excluded and the Department cannot be put to disadvantage, because, the petitioner has obtained interim order in this Writ Petition.

6. With the above observations, this Writ Petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Deputy Registrar (Judicial)

/true copy/

Sub Asst. Registrar

sd/jer

To

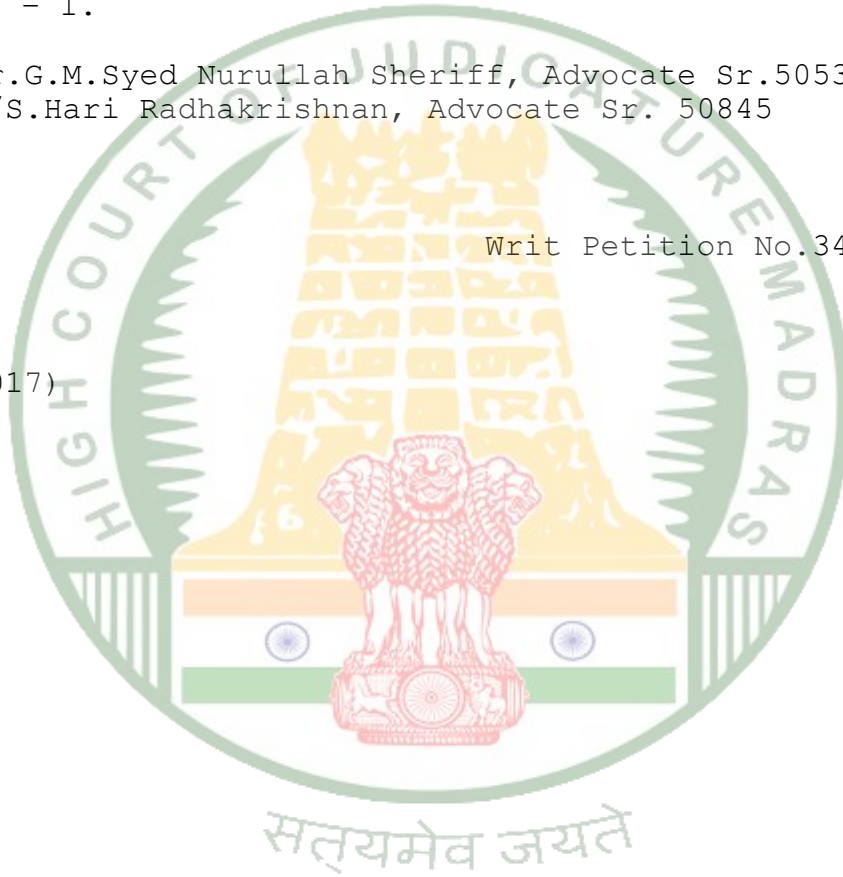
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2. The Deputy Commissioner of Customs (EPCG)
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+lcc to Mr.G.M.Syed Nurullah Sheriff, Advocate Sr.50530

+lcc to M/S.Hari Radhakrishnan, Advocate Sr. 50845

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GP(CO)
VR(18/8/2017)



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