

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.07.2017

Coram

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.38606 of 2003
and
W.P.M.P.No.46836 of 2003

M/s.Nexus Transcore Industries,
No.202, "Shivalaya" Block 'C',
No.16, Ethiraj Salai,
Chennai - 600 008.
(Rep.by its managing partner
Mr.Ketan C.Bagadia) ...Petitioner

Vs.

1. The Deputy Commissioner of Customs,
'Custom House',
Dumas Street, Pondicherry - 605 001.
2. Indus Ind Bank,
No.3, Village Road,
Nungambakkam,
Chennai - 600 034.Respondents

Writ Petition filed under Article 226 of the Constitution of India, to issue of Writ of Certiorari, calling for the records pertaining to the impugned demand notice issued by the 1st Respondent bearing C.No.VIII/48/3/2003 dated 22.12.2003 and quash the same.

For Petitioner : Mr.G.Derricksam for
Mr.S.S.Radhakrishnan
For Respondent : Mr.T.Premkumar Chopda
Standing Counsel for R1

ORDER

Heard Mr.G.Derricksam, learned counsel for the petitioner and Mr.T.Premkumar Chopda, learned Standing Counsel for the first respondent.

2. The Petitioner has filed this Writ Petition challenging a demand notice issued by the first respondent, dated 22.12.2003, by which, the first respondent has addressed the second respondent for invoking the Bank Guarantee furnished by the

petitioner for provisional release of an import effected by the petitioner.

3. It appears that during the relevant time, the petitioner and his sister concern effected similar imports, which were detained and provisional release was granted subject to furnishing of bank guarantee and bonds. In one such case, the bill of entry was finally assessed and adopting the same, the impugned demand was issued to the petitioner's bank, second respondent, without communicating the order finally assessing the bill of entry. Identical contention was raised by the petitioner in W.P.No.38907 of 2003, which was disposed of by order dated 09.08.2004, wherein the Court took note of the fact that the adjudication order having been passed and the same, if not communicated to the petitioner, should be communicated to them, leaving it open to them to approach the appropriate authority. Thus, the contention raised by the petitioner that prior to the passing of the Order-in-Original, the Bank Guarantee cannot be invoked, was accepted by the Court.

4. In another case filed by the petitioner in W.P.No.39219 of 2003, dated 30.08.2004, where, the order finally assessing the bill of entry, was communicated to the petitioner and they have filed an appeal before the CEGAT and therefore, the Court observed that since final order has been passed, the respondent can invoke the bank guarantee. In the instant case, it is not known whether final adjudication has been passed and it has been communicated to the petitioner. The counter affidavit also does not specifically state that as it was sworn to on 26.04.2004.

5. Thus, this Court is inclined to dispose of the Writ Petition with the following directions:-

In the event, the adjudication order has already been passed and not communicated, it shall be communicated to the petitioner within a period of four weeks from the date of receipt of a copy of this order. Leaving it open to the petitioner to question the same in the manner known to law, if they are aggrieved. If the order has already been communicated and there is no challenge to the order, then it is open to the first respondent to proceed to recover the amount by invoking the bank guarantee in accordance with law. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

pbn

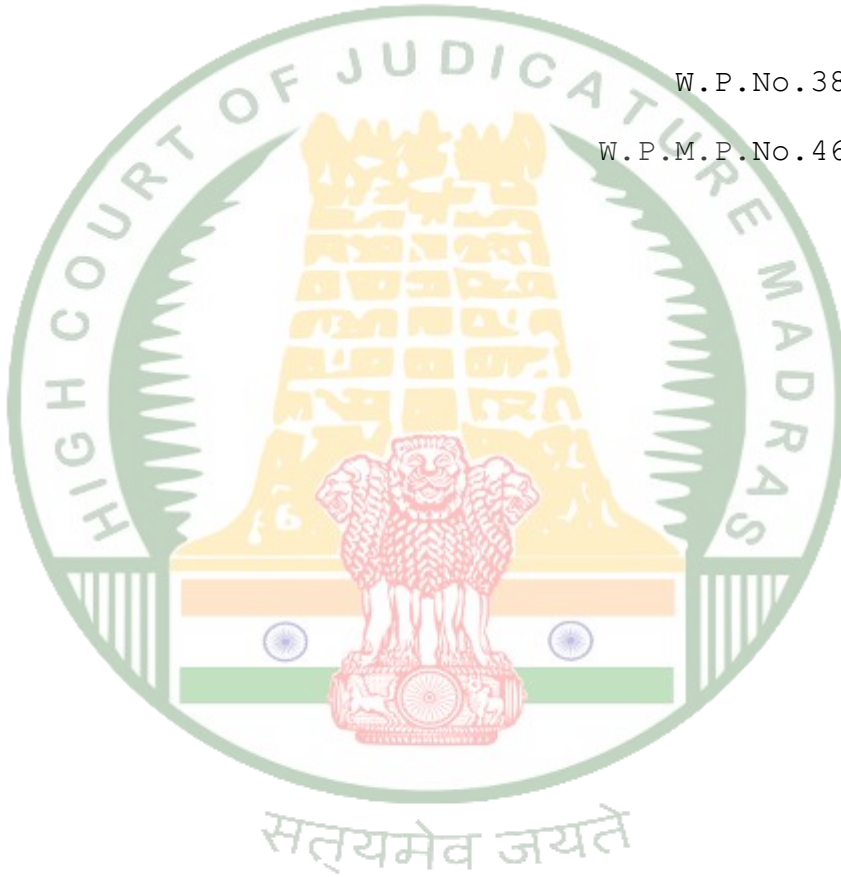
To

The Deputy Commissioner of Customs,
'Custom House',
Dumas Street,
Pondicherry - 605 001.

+ 1 cc to Mr.T. Pramod Kumar Chopda, Advocate Sr.51550
+ 1 cc to Mr. Hari Radhakrishnan, Advocate SR.51511

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CS-V
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