The Hon'ble Sri Justice C.V.Nagarjuna Reddy

and

The Hon'ble Sri Justice Challa Kodanda Ram

Writ Petition No.16680 of 2016

Dt: 03-11-2017

Between:

Vijaya Bank, ARM Branch,
Basheerbagh, Hyderabad
Rep. by its authorized officer

....Petitioner

and

Union of India,
Dept., of Customs
Ministry of Finance
New Delhi, rep. by its Secretary & 4 others

....Respondents

Counsel for the Petitioner: **Mr.E.Madan Mohan Rao**

Counsel for respondent Nos.1, 3 & 4: **Mr.B.Narasimha Sarma, Sr.SC for Customs, Central Excise and Service Tax**

Counsel for respondent No.2: **Mr.M.Ramalingeswara Reddy**

Counsel for respondent No.5: **Mr.A.K.Jayaprakash Rao**

The Court made the following:

Order: **(per Hon'ble Sri Justice C.V.Nagarjuna Reddy)**

This Writ Petition is filed for a Mandamus to direct the respondents to hand over the physical possession of the hypothecated stocks of alcohol beverages kept with respondent No.5- Corporation to the petitioner- Bank in pursuance of its letters, dated 20-05-2016 and 25-04-2016, and also to proceed as per the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the SARFAESI Act').

During the hearing, it is brought to our notice that this Writ Petition was filed when the presiding Officer of the Debt Recovery Tribunal was not available and that during the pendency of this Writ Petition, the Debt Recovery Tribunal has started functioning. It is further stated that the petitioner has filed OA.No.304 of 2017 under Section 20 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (for short 'the 1993 Act').

Mr.E.Madan Mohan Rao, learned Counsel for the petitioner, also submitted that a notice under Section 8 (4) of the Security Interest (Enforcement) Rules, 2002 (for short 'the Rules'), has been issued to Respondent Nos.3 and 4.

Mr.B.Narasimha Sarma, learned Senior Standing Counsel for Customs, Central Excise and Service Tax, submitted that respondent No.4 has neither submitted the bill of entry under Section 68 of the Customs Act, 1962, nor paid the import duty as envisaged under Section 12 thereof and that therefore, unless the goods are cleared under the said provision, they cannot be allowed for home consumption.

In our opinion, it is not necessary for us to adjudicate this aspect, at this stage, for the reason that the petitioner has already availed the remedy under Section 20 of the 1993 Act, apart from initiating the proceedings under the SARFAESI Act by issuing notice under Rule 8 (4) of the Rules. Therefore, the petitioner has to pursue these remedies.

In this view of the matter, the Writ Petition is dismissed with liberty to the petitioner to pursue the remedies in terms of the above observations.

As a sequel to dismissal of the Writ Petition, Miscellaneous Petitions, pending if any, stand disposed of as infructuous.

(C.V.Nagarjuna Reddy, J)

(Challa Kodanda Ram, J)

Date: 03-11-2017
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