

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.Nos.1167 of 2018 and 829 of 2013
and
C.M.P.No.9392 of 2018
and
M.P.Nos.1,2 of 2013

W.A.No.1167 of 2018:

- 1.Union of India,
Rep. by the Secretary Ministry of Finance,
Department of Revenue,
Government of India,
North Block, New Delhi - 110 001.
 - 2.Central Board of Excise & Customs,
North Block, New Delhi - 110 001.
 - 3.Commissioner of Customs (Sea Export),
Custom House,
No.60, Rajaji Salai,
Chennai - 600 001.
 - 4.Deputy Commissioner of Customs (Enquiry),
Custom House,
No.60, Rajaji Salai,
Chennai - 600 001.
 - 5.Assistant Commissioner of Customs
(Appg. Docks - Admin),
Custom House,
No.60, Rajaji Salai,
Chennai - 600 001.
- .. Appellants

Vs.

Sun Global Logistics Pvt. Ltd.,
Survey No.742, North Avenue Road,
SIPCOT Irungattukottai,
Sriperumbudur 601 105.

.. Respondent

Prayer: Writ Appeal is filed under Clause 15 of the Letters Patent, against the order, dated 03.04.2013, made in W.P.Nos.7937 of 2013.

W.P.7937 of 2013:

Writ direction or order to call for the order dated 11-Feb-2013 of the 3rd and 5th respondents bearing F.No.S.Misc/117/2011-Appg Docks (PC) and quashing the same and directing the 1st respondent to call for the petitioners application dated 2-Aug-2010 from the 4th respondent and consider the same pass order for grant of waiver of Cost Recovery Charges with effect from August 2010 in respect of the petitioner.

For Appellants : Mrs.Hema Murali Krishnan
Central Govt. Standing Counsel

For Respondent : Mr.R.Raghavan

W.A.No.829 of 2013:

Sun Global Logistics Pvt. Ltd.,
Survey No.742, North Avenue Road,
SIPCOT Irungattukottai,
Sriperumbudur 601 105. ... Appellant

Vs.

1.Union of India,
Rep. by the Secretary Ministry of Finance,
Department of Revenue,
Government of India,
North Block, New Delhi - 110 001.

2.Central Board of Excise & Customs,
North Block, New Delhi - 110 001.

3.Commissioner of Customs (Sea Export),
Custom House,
No.60, Rajaji Salai,
Chennai - 600 001.

4.Deputy Commissioner of Customs (Enquiry),
Custom House,
No.60, Rajaji Salai,
Chennai - 600 001.

5. Assistant Commissioner of Customs
(Appg. Docks - Admin),
Custom House,
No.60, Rajaji Salai,
Chennai - 600 001.

.. Respondents

Prayer: Writ Appeal is filed under Clause 15 of the Letters Patent, against the order, dated 03.04.2013, made in M.P.No.1 of 2013 in W.P.No.7937 of 2013.

M.P.No.1 of 2013 in W.P.7937/2013:

Grant and interim stay of the recovery Notice dated 19.03.2013 bearing F.No.S. Misc/117/2011-Appg docks(PC) issued by the 5th Respondent on behalf of the 3rd Respondent in M.P.No.1 of 2013 Pending disposal of the above W.P. 7937/2013.

For Appellant : Mr.R.Raghavan

For Respondents: Mrs.Hema Murali Krishnan
Central Govt. Standing Counsel

COMMON JUDGMENT

(Judgment of this Court was made by S.MANIKUMAR, J.)

Material on record discloses that, Sun Global Logistics Private Limited, Sriperumbudur, has filed W.P.Nos.7937 and 7938 of 2013, under Article 226 of the Constitution of India, for the following reliefs:-

(i) a writ of certiorari quashing certain portions of paragraph 2.10 of chapter 28 of the 2nd respondent's (CBEC) Customs Manual dated 02.02.2012 (which in effect contains the Instruction aforesaid),

(ii) a writ of certiorarified mandamus calling for the records of the order dated 11.02.2013 bearing F.No.S.Misc./117/2011 Appg. Dock (PC) issued by the 5th respondent in the name of the 3rd respondent and quashing the same and directing the 1st respondent to call for the petitioner's application dated 02.10.2010 from the 4th respondent and consider the same and pass orders regarding the grant of waiver of Cost Recovery Charges to the petitioner with effect from August, 2010.

2. M/s.Global Logistics Private Limited, Sriperumbudur, has also filed W.P.No.23693 of 2014, praying for issuance of a Writ of Certiorari, calling for the order of the 5th respondent dated 18.08.2014, bearing F.No.S.Misc/117/2011-Docks and quash the

same.

3. Opposing the reliefs sought for, the Assistant Commissioner of Customs, Chennai, namely the 5th respondent, has filed a counter affidavit on behalf of the respondents therein.

4. On the prayer for an interim order against the recovery notice, dated 19.03.2013, bearing F.No.S.Misc./117/2011 Appg. Dock (PC), issued by the Assistant Commissioner of Customs, Chennai, respondent No.5, sought for in W.P.No.7939 of 2013, and after hearing the learned counsel for the parties, in M.P.No.1 of 2013 in W.P.No.7937 of 2013, dated 03.04.2013, the Writ Court ordered as hereunder:-

"2.Mr.A.Thiagarajan, learned Senior Counsel appearing for the petitioner would contend that the impugned order is contrary to law and the principles of natural justice and is issued seeking to fasten a huge liability of Rs.1.24 Crores on the petitioner, without serving the show cause notice on the petitioner, thereby no opportunity was afforded to the petitioner and therefore the order is in violation of the principles of natural justice. It is his further contention that the impugned order is barred by the law of limitation, inasmuch as it seeks to claim in February 2013, the amount in respect of the period from July 2008 and hence, the impugned proceedings are vitiated.

3. Considering the same, there shall be an order of interim stay on condition that the petitioner pays 50% of the demand amount less the amount already paid by the petitioner, within a period of two (2) weeks from the date of receipt of a copy of this order. On such payment being made, it is open to the respondents to consider the waiver application in accordance with law and pass appropriate orders."

5. Being aggrieved by the portion of the interim order, dated 03.04.2013, directing payment of 50% of the demand amount less the amount already paid by them, M/s.Sun Global Logistics Private Limited, Sriperumbudur, has filed W.A.No.829 of 2013, and sought for reversal of the same. Appellant has also prayed for a direction, to consider the application, stated supra.

6. Being aggrieved by that portion of the interim order, directing consideration of the application, Union of India, represented by Secretary, Ministry of Finance, Department of Revenue, Government of India, New Delhi and four others, have filed W.A.No.1167 of 2018.

7. As both the writ appeals have arisen from out the same set of facts, for reversal of the interim order, both the writ appeals are taken up together and disposed of by this common order.

8. Though the learned counsel for the parties, assailed the correctness of that portion of the order impugned in the appeals, as stated supra and accordingly sought for reversal, having regard to the facts and circumstances of the case, we are not inclined to interfere with the interim direction issued in the year 2013, directing to pay 50% of the demand amount, as the same has not been complied with and consequently, respondents are yet to consider the application, as directed. Both the parties have not complied with the directions issued.

9. Pleadings in the writ petition are completed. Having regard to the material on record, length of time, we are not inclined to interfere with the orders impugned in both the appeals.

10. Accordingly, both the writ appeals are dismissed. As the writ petition is of the year 2014, and the same being listed for final disposal, and having regard to the nature of the relief sought for, we request the writ court to consider, expeditious disposal of the writ petition. The parties are at liberty to raise the contentious issues before the writ court. No Costs. Consequently, the connected miscellaneous petitions are closed.

s/d-

Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

dm
To

1. Union of India,
Rep. by the Secretary Ministry of Finance,
Department of Revenue,
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2. Central Board of Excise & Customs,
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3. Commissioner of Customs (Sea Export),
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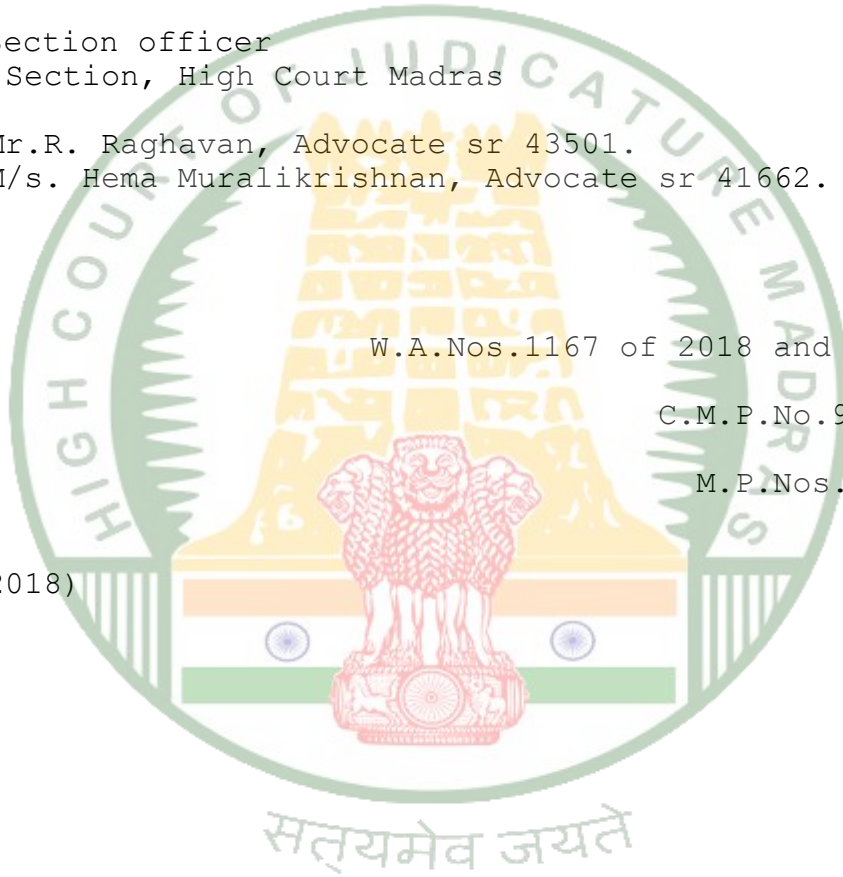
5. Assistant Commissioner of Customs
(Appg. Docks - Admin),
Custom House,
No.60, Rajaji Salai,
Chennai - 600 001.

Copy to
The Section officer
Writ Section, High Court Madras

+1 CC to Mr.R. Raghavan, Advocate sr 43501.
+1 CC to M/s. Hema Muralikrishnan, Advocate sr 41662.

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SP(01/08/2018)



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