IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.04.2018

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

Writ Petition No.3561 of 2018
and
W.M.P.No.4357 of 2018

M/s. Alam Impex,
rep. by its Partner, Mr. Aftab Alam. ...Petitioner

Vs.

The Deputy Commissioner of Customs (Gr.7H),
No.60, Rajaji Salai, Custom House,
Chennai-1. ...Respondent

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for the records connected with the impugned communication of the respondent herein comprised in F.No.S.Misc.436/2017-Gr.7B/7H, dated 22.9.2017, conveying the provisional release order passed by the competent authority under Section 110A of the Customs Act in so far as it related to condition Nos.(ii) and (iii) for the grant of provisional release of the goods seized and covered under Bill of Entry No.9670811 dated 12.05.2017, and to quash the same and consequently to modify condition Nos.(ii) and (iii) of the impugned communication dated 22.9.2017, imposed for the provisional release of the above goods in terms of the ruling of the Hon'ble Apex Court in the case of M/s.Navshakthi Industries Pvt. Ltd. dated 04.5.2011 and the Customs (Provisional Duty Assessment) Regulations, 1963.

For Petitioner : Mr.S.Baskaran
For Respondent : Mr.N.Senthil Kumar,
Standing Counsel

O R D E R

The petitioner has filed this Writ Petition, challenging the order passed by the respondent, dated 22.9.2017, while considering the request made by the petitioner for the grant of provisional release of the goods under Section 110A of the Customs Act in respect of the goods imported vide Bill of Entry No. 9670811, dated 12.05.2017.

2. At the outset, Mr.S.Baskaran, the learned counsel appearing for the petitioners would submit that, the issue involved in this Writ Petition is covered by the decision of this Court, in M/s.Kanpur Trading Co., Vs. The Deputy Commissioner of Customs, Chennai-1, in W.P.No.3078 of 2018, dated 16.04.2018. The learned counsel also produced a photocopy of the order, dated 16.04.2018, for reference, and prays that similar direction may be issued in the present case as well.

3. Mr. N.Senthil Kumar, the learned Standing Counsel for the respondent does not dispute the position and agrees that the issue involved in this Writ Petition is covered by the decision rendered in the above referred case.

4. On a perusal of the decision relied upon by the learned counsel for the petitioner, it is seen that this Court, granted partial relief to the petitioner, by modifying the conditions imposed in the order impugned thereunder. In this connection, it would be apposite to quote the relevant portion from the said order, and it is extracted as hereinbelow:-

> " 9. After elaborately hearing the learned counsel for the parties and carefully perusing the materials placed on record, this Court is of the view that the conditions imposed in the impugned order can be slightly modified. This is so because the goods, which are permitted for provisional release, have already been scrutinized by the Department and it appears that the except for the prohibited goods and except for the goods where there are violations with regard to intellectual property rights, the Department is willing to release the same.
>
> 10. Section 110A of the said Act provides for provisional release of the goods, documents and things seized pending adjudication. It states that any goods, documents or things seized under Section 110, may, pending the order of the Adjudicating Authority, be released to the owner on taking a bond from him in the proper form with such security and conditions as the adjudicating authority may require.
>
> 11. Thus, the power under Section 110A of the said Act is to make a delicate

balance between the importer of the goods and the Revenue. In other words, the interest of the Revenue should be sufficiently safeguarded, so that when the Adjudicating Authority takes up the case for final adjudication, they should be able to recover the duties and other levies and the order passed by the Adjudicating Authority cannot be reduced to a paper order.

12. Bearing in mind the object of the said provision, if this Court examines the impugned order, it is found that the direction to furnish bank guarantee for a sum of Rs.1.70 Crores apart from executing a personal bond for a sum of Rs.2.29 Crores and payment of differential duty of Rs.64,30,210/- appear to be onerous. Therefore, this Court is of the view that interest of the Revenue can be protected sufficiently by slightly modifying the conditions imposed in the impugned order.

13. So far as the decision in the case of M/s.Novel Impex is concerned, it appears that this Court, in the said case, found that there is an alternate remedy available to the petitioner therein by way of appeal. When the petitioner therein filed an appeal before the Commissioner of Appeals, it appears that the same has been dismissed and the further appeal has been filed before the Customs, Excise and Service Tax Appellate Tribunal, which is yet to attain finality. Thus, taking into consideration the fact that the Bill of Entry was filed in June 2017 and that the respondent himself is willing to provisionally release the goods, this Court is inclined to dispose of the writ petition by modifying the conditions imposed in the impugned order.

14. Accordingly, the Writ Petition is partly allowed by directing the petitioner to comply with the following conditions :-

(i) The petitioner is directed to pay the applicable differential duty to the tune of Rs.64,30,210/- (Rupees sixty four lakhs thirty thousand two hundred and ten only) on the redetermined value as per the report of the DRI, CZU.

(ii) The petitioner shall execute a personal bond for the value of Rs.4,00,00,000/- (Rupees four crores only) and keep the bond alive till final adjudication is made.

(iii) Upon compliance of the above twin conditions, in accordance with the stipulations of the respondent Department, the goods shall be released provisionally within a period of one week from the date, on which, the petitioner complies with the above twin conditions.

(iv) Since the goods have been detained and since the DRI has taken up the case for investigation, it goes without saying that the petitioner is entitled to a certificate for waiver of demurrage and the detention charges from the date of detention till the date of release. On an application being made, the respondent shall consider and grant the certificate in the proper format. "

5. Thus, following the above decision, the present Writ Petition is disposed of on the same lines, i.e., by directing the petitioner to comply with the following conditions:-

(i) The petitioner is directed to pay the applicable differential duty to the tune of Rs.75,27,756/- (Rupees Seventy Five lakhs Twenty Seven thousand Seven Hundred and Fifty Six only) on the redetermined value as per the report of the DRI, CZU.

(ii) The petitioner shall execute a personal bond for the value of Rs.4,00,00,000/- (Rupees four crores only) and keep the bond alive till final adjudication is made.

(iii) Upon compliance of the above twin conditions, in accordance with the stipulations of the respondent Department, the goods shall be released provisionally within a period of one week from the date, on which, the petitioner complies with the above twin conditions.

> (iv) Since the goods have been detained and since the DRI has taken up the case for investigation, it goes without saying that the petitioner is entitled to a certificate for waiver of demurrage and the detention charges from the date of detention till the date of release. On an application being made, the respondent shall consider and grant the certificate in the proper format."

6. The Writ Petition is disposed of on the aforesaid terms. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

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Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To
The Deputy Commissioner of Customs (Gr.7H),
No.60, Rajaji Salai, Custom House,
Chennai-1.

+1cc to Mr.N.Senthil kumar, Advocate sR.NO.29148
+2cc to Mr.S.Baskaran, Advocate Sr.No.29049

RK(CO)
sm:15.5.2018