IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2018

CORAM:

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

W.A.No.1645 of 2018
and CMP No.13255 of 2018

M/s.Novel Impex,
Shop No.55, Amoluck Complex,
II Floor, No.3, Periya Naicken Street,
Sowcarpet, Chennai - 600 003.
by its Proprietor Mr.Narendra Kumar Vora .. Appellant

versus

1. The Commissioner of Customs (Group-3)
Chennai II Commissionerate,
No.60, Rajaji Salai,
Customs House,
Chennai - 600 001.

2. The Deputy Commissioner of Customs (Group-3)
No.60, Rajaji Salai,
Customs House,
Chennai - 600 001. .. Respondents

Writ Appeal filed against the order dated 18.06.2018 in W.P.No.14021/2018.

W.P.No.14021 of 2018:
Writ Petition filed under Article 226 of the constitution of India praying for the issuance of a Writ of Mandamus directing the respondents herein to implement the orders passed by the CESTAT Chennai which vide its Final Order No. 41201/2018 dt 13.4.2018 in C/40687/2018-DB had by following the ratio laid down by the jurisdictional High Court and also the judgment of the Honourable Apex Court held that the onerous condition laid down by the 2nd respondent and the same confirmed by the Commissioner of Customs (Appeals) cannot be sustained and accordingly while setting aside the same had directed the provisional release of the impugned goods upon compliance of the modified condition without any undue delay the goods of which are covered under Bill of Entry Nos. 3510385 and 3510423 both dt 6.10.2017.

For Appellant : Mr.S.Baskaran

For Respondents: Mr.G.M.Syed Nurullah Sheriff
Senior Standing counsel for Customs.

JUDGMENT
(Order of the Court was delivered by S.MANIKUMAR, J.)

CESTAT, Madras, vide Final Order No.41201 of 2018 in C/40687/2018-DB dated 13.04.2018 directed, provisional release of the goods, on the following terms.

"(1) Appellant-importer shall pay the duty on the declared import value, if not already done.

(2) Appellants shall pay 30% of the differential duty between the duty on the declared value and the duty on proposed enhanced value fixed by the department, in the form of a Bank Guarantee.

(3) Appellants shall execute a personal bond for value of balance of 70% differential duty to the satisfaction of competent authority.

(4) On fulfilment of above conditions, the goods shall be released provisionally to the appellants without undue delay.

(5) Demurrage and detention charges are waived in line with the observations of the Hon'ble High Court of Madras in their order dt.21.12.2017 in W.P.No.31762/2017."

2. In terms of the said order, M/s.Novel Impex, Chennai, sent a lawyer's notice dated 24.04.2018 to the Commissioner of Customs, Chennai II Commissionerate, to issue directions to the concerned officer to comply with the order of the CESTAT. Said request is followed by another letter dated 17.05.2018 addressed to the Chief Commissioner of Customs, Chennai.

3. Contending inter alia that the request has not been responded and order of CESTAT, Madras, not implemented, petitioner has sought for a writ of mandamus, directing the respondents herein to implement the orders passed by the CESTAT, Chennai, which vide its Final Order No.41201/2018 dated 13.04.2018 in C/40687/2018-DB had by following the ratio laid down by the jurisdictional High Court and also the judgment of the Hon'ble Apex Court held that the onerous condition laid down by the 2nd respondent and the same confirmed by the Commissioner of Customs (Appeals) cannot be sustained and accordingly while setting aside the same had directed the provisional release of the impugned goods upon compliance of the modified condition without any undue delay, the goods of which are covered under Bill of Entry Nos.3510385 and 3510423 both dated 16.10.2017.

4. Before the writ Court, learned senior standing counsel appearing for the respondents therein submitted that the department, had proposed to file an appeal against the order of CESTAT, Madras. Period of limitation of the appeal is six months. Copy of the CESTAT order was received on 12.06.2018.

5. Having regard to the statutory right of filing an appeal, by observing that Court cannot curtail the right of statutory appeal, available under the provisions of the Customs Act, vide order dated 18.06.2018, disposed of the writ petition as hereunder.

> "Accordingly, the writ petition is disposed of with an observation that if the respondent fails to invoke the appeal remedy available to them under the said Act within the period of limitation stipulated, by taking note of the fact that the order copy has been received by the Department on 12.6.2018, on the expiry of limitation period, within one week thereafter, the respondent shall implement the order passed by the Tribunal. No Costs."

6. Being aggrieved by the same, M/s.Novel Impex, Chennai has filed the instant Writ Appeal.

7. As rightly observed by the writ Court, mandamus cannot be issued to curtail the statutory right of the respondents, in preferring an appeal under the provisions of the Customs Act. But at the same time, considering the lis between the parties, provisional release has already been directed to be made, subject to certain conditions.

8. Petitioner has a right to seek for provisional release. Equally respondents have a right to prefer a statutory appeal.

9. As per Section 130 of the Customs Act, 1962, six months period is provided for filing a statutory appeal. When provisional release is directed to be made, petitioner should not suffer till the last date of filing of the statutory appeal.

10. Mr.G.M.Syed Nurullah Sheriff, learned senior standing counsel for the Customs and Central Excise Department submitted that appeal papers are ready and awaiting approval from the competent authority and statutory appeal would be filed within two weeks from today. He also submitted that if statutory appeal is not filed within two weeks from today, order of CESTAT, Madras made in final order No.41201 of 2018 in C/40687/2018-DB dated 13.04.2018, would be implemented.

11. Placing on record the above submission, writ appeal is disposed of with a direction to the respondents to file the

statutory appeal within two weeks from today, failing which order of CESTAT, Madras, in final order No.41201 of 2018 in C/40687/2018-DB dated 13.04.2018, should be implemented. No Costs. Consequently, the connected Civil Miscellaneous Petition is closed.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

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To

1.The Commissioner of Customs (Group-3)
Chennai II Commissionerate,
No.60, Rajaji Salai,
Customs House, Chennai - 600 001.

2.The Deputy Commissioner of Customs (Group-3)
No.60, Rajaji Salai,
Customs House, Chennai - 600 001.

+2 Ccs to Mr.N. Viswanathan, advocate sr 53169.
+1 CC to Mr.G.M.Syed Nurullah Sheriff, Advocate sr 53122.

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SP(03/08/2018)