

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.31300 of 2017
and
W.M.P.Nos. 34381& 34382 of 2017

M/s.C2I

564/565, George Rattanam Road
Golden George Nagar
Nerkundram, Chennai - 600 106
Rep by its Partner
Shri R.Jai Shankar

...Petitioner

Vs.

1.The Assistant /Deputy Commissioner of
Customs, Group - 6
Chennai II Commissionerate
Custom House, 60, Rajaji Salai
Chennai - 600 001.

2.The Commissioner of Customs
Chennai II Commissionerate
Customs House, 60, Rajaji Salai
Chennai - 600 001.

3.The Chief Commissioner of Customs
Customs House, 60, Rajaji Salai
Chennai - 600 001.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents, more particularly the first respondent to clear the goods covered under Bill of Entry No.3303213 dated 19.09.2017, without taking into consideration Notification No.26/2015-20 dated 1.9.2017 and further direct the respondents to issue a demurrage cum container detention waiver certificate for waiver of container detention and demurrage charges, in terms of Regulation 6 (1)(I) of the Handling of Cargo in Customs Area Regulations 2009.

For Petitioner : Mr.S.Krishanandh

For Respondents : Ms.Hema Muralikrishnan
Senior Standing Counsel

O R D E R

Heard Mr.S.Krishnanandh, learned counsel for the petitioner and Ms.Hema Muralikrishnan, learned counsel appearing on behalf of the respondents.

2.The petitioner has filed this writ petition, seeking for issuance of a writ of Mandamus directing the respondents, more particularly the first respondent to clear the goods covered under Bill of Entry No.3303213 dated 19.09.2017, without taking into consideration Notification No.26/2015-20 dated 1.9.2017 and further direct the respondents to issue a demurrage cum container detention waiver certificate for waiver of container detention and demurrage charges, in terms of Regulation 6 (1)(I) of the Handling of Cargo in Customs Area Regulations 2009.

3.The Director General of Foreign Trade notification provides for testing by an independent laboratory to ensure that the cargo which is imported by the petitioner, which are children toys are safe for being sold in the domestic market. One of the contentions raised by the petitioner is by contending that the notification issued by the Director General of Foreign Trade having been uploaded in the Government of India Gazette much after the consignment was dispatched, cannot be made applicable to the impugned consignment. This contention has to be rejected in the light of the decision of this Court in Cascade Energy Private Limited Vs. Union of India and Ors. in W.P.No.14626/2017 etc. batch, dated 25.01.2018, wherein it was held that the date of uploading in the Electronic Gazette is of no consequence and the date of notification shall be the date on which the same comes into force. Therefore, the first contention raised by the petitioner has to be rejected. This leaves us with only one issue as to whether the petitioner is entitled for release of the cargo.

4.Considering the effect of the recent notification which has been issued in public interest, that the cargo cannot be released without appropriate testing at the prescribed lab which facility appears to be available as of now at New Delhi. However, the problem expressed by the importer/petitioner is that the cargo contains children toys and there are several varieties of children toys and if sample is drawn from each of the category of toys then it will be an expensive affair and totally unviable.

5.Mrs.Hema Muralikrishnan, learned Senior Standing Counsel appearing for the revenue expressed her concern about the nature of cargo and submitted that unless rigorous testing

is done and the cargo is certified for release, the same cannot be permitted to be released for home consumption.

6.Considering the concern expressed by the revenue and also balancing the interest of the importer, the court is of the opinion that the following order would meet the ends of justice.

7.The respondent/department is permitted to draw representative samples, which shall not exceed 15% of each variety of the cargo, which has been imported. In other words, the respondents shall draw representative samples of one(1) piece per variety. While drawing the samples, the customs house agent of the petitioner should be permitted to be present and after the samples are drawn, the same shall be sent to the approved laboratory for testing and on receipt of the test report, the respondents are directed to pass appropriate orders on merits and in accordance with law.

8.It is needless to state that the cost of testing shall be borne by the petitioner, if the demand is raised on the petitioner and the advance payment is called for and the same shall be remitted.

9.The samples shall be drawn within a period of one(1) week from the date of receipt of the copy of this order and forwarded to the approved laboratory for testing and I am told that the laboratory will require four (4) weeks time for completing the test and submitting a report. From the date of receipt of a copy of the report the respondents are directed to pass orders in terms of the above direction within a period of two(2) weeks thereafter.

10.With the above direction, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

सत्यमेव जयते
Assistant Registrar (CS-VII)

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Sub Assistant Registrar

may
To

1.The Assistant /Deputy Commissioner of
Customs, Group - 6
Chennai II Commissionerate
Custom House, 60, Rajaji Salai
Chennai - 600 001.

2.The Commissioner of Customs
Chennai II Commissionerate
Customs House, 60, Rajaji Salai
Chennai - 600 001.

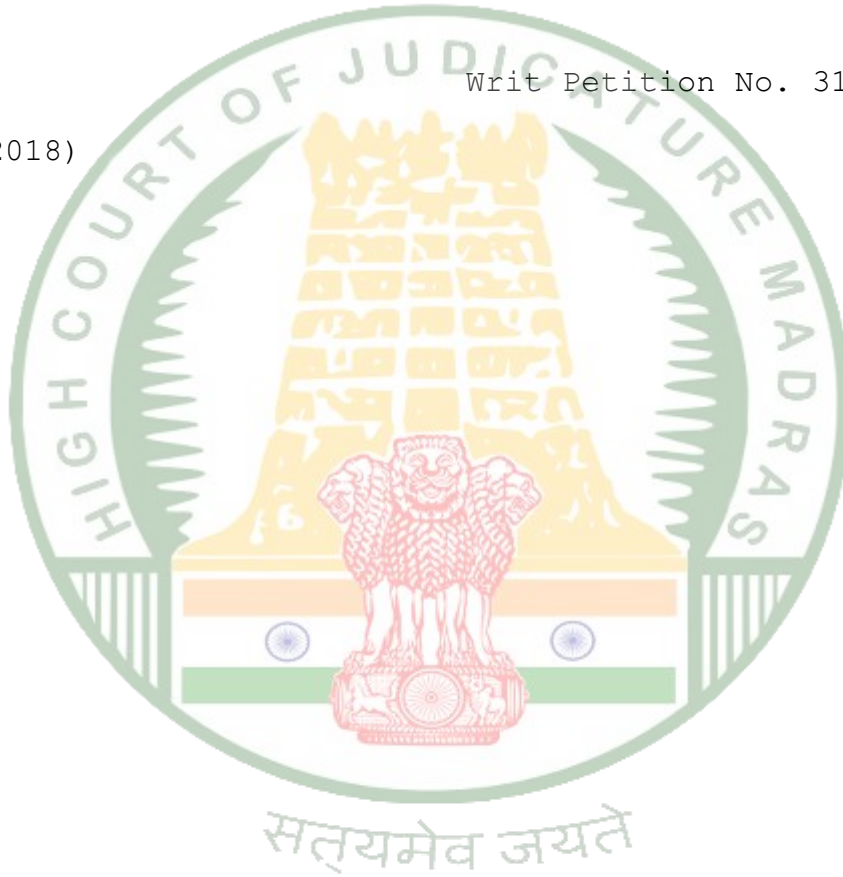
3.The Chief Commissioner of Customs
Customs House, 60, Rajaji Salai
Chennai - 600 001.

+lcc to Mr.B.SATHISHSUNDAR, Advocate, S.R.No. 6451

+lcc to Mr.HEMA MURALIKRISHNAN, Advocate, S.R.No. 6452

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TR(19/02/2018)



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