

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 04.04.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.7830 of 2018

& W.M.P.No.9773 of 2018

M/s.Priyanka Enterprises,
Represented by its Managing Partner,
Mr.T.Padmanabha Reddy
Old No.16/II/393, New No.16-6-129
Srinivasa Agraharam, Nellore,
Andhra Pradesh-524 003. .. Petitioner

Versus

- 1.The Joint Commissioner of Customs (Group 1)
Custom House, 60 Rajaji Salai
Chennai - 600 001.
- 2.The Deputy Commissioner of Customs (Group 1),
Custom House, 60 Rajaji Salai,
Chennai - 600 001. .. Respondents

Prayer: The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order dated 22.12.2017 in F.No.S.Misc.R.130/2017-Gr.1 passed by the 2nd respondent and quash the same and further direct the 2nd respondent to issue a letter for waiver of demurrage and detention charges from the date of detention of the goods till the date of clearance of the goods in terms of Regulation 6(1) of the Handling of Cargo in Customs Areas Regulations, 2009 and pass such other orders.

For Petitioner : Mr.Hari Radhakrishnan
For Respondents : Mr.Venkadeshwaran,
Senior Panel Counsel.

ORDER

Heard Mr.Hari Radhakrishnan, learned counsel appearing for the petitioner and Mr.Venkadeshwaran, learned Senior Panel Counsel appearing for the respondents. In the light of the querying error, which is apparent on the face of the impugned proceedings, this writ petition is taken up for disposal.

2. Pursuant to the order passed by this Court in W.P.No.30233 of 2017, dated 23.11.2017, the goods were directed to be released, subject to certain conditions and it was ordered that the petitioner shall be entitled to a detention certificate for the period of detention in accordance with the Handling of Cargo in Customs Areas Regulations, 2009 by considering the petitioner's applications for waiver. The operative portion of the order and direction is as follows:

"4.Thus, considering the above submissions, this Court is inclined to dispose of the writ petition by issuing following directions:

1. The petitioner is granted liberty to file an appeal before the Commissioner of Customs (Appeals), Chennai within a period of thirty days from the date of receipt of a copy of this order.
2. The petitioner is directed to pay the differential duty of Rs.31,70,083/- in respect of the Bill of Entry No.2311679 dated 04.07.2017 as well as the duty quantified on the live consignment covered in Bill of Entry No.3450978 dated 03.10.2017 by calculating the IGST @ 5%. On remittance of the differential duties, the respondent shall provisionally release the cargo within a period of seven days from the date of remittance for both Bills of Entry.
3. In respect of the redemption fine as well as the penalty imposed under Section 112(a) of the Customs Act for the live consignment as demanded in the impugned order, the petitioner shall furnish a bond for the said amount and keep the bond alive till the disposal of the appeal by the Appellate Commissioner.
4. The petitioner is entitled to canvass all points before the appellate authority who shall decide the same on merits and in accordance with law uninfluenced by any observations made in this order.
5. The petitioner shall be entitled to a detention certificate for the period of detention in accordance with the Handling of Cargo in Customs Area Regulations, 2009 by considering the petitioner's application for waiver."

3. The respondent has rightly understood the directions issued and by proceedings dated 22.12.2017 has issued a certificate for waiver of detention and demurrage charges in respect of Bill of Entry No.3450978, dated 03.10.2017. However, the petitioner is aggrieved because the certificate is valid till the issuance of Section 49 order i.e., on 16.11.2017.

4. In my considered view, the petitioner is entitled to issuance of certificate for waiver of detention and demurrage till it is released. In fact, such order has been passed by the Customs Authority and one such order dated 12.10.2017 passed by the Assistant Commissioner (DIU), Chennai -3 in favour of M/s.Far East Trading Establishment shows that the certificate has been given till the time of release.

5. Since the direction was issued by this Court for grant of release subject to conditions, the petitioner is entitled to issuance of certificate for waiver of detention and demurrage charge till the date of release of the goods i.e., 22.12.2017.

6. Accordingly, these writ petitions are partly allowed and the impugned proceedings insofar as it restricts the validity of the waiver certificate till 16.11.2017 is set aside and the second respondent is directed to issue certificate for waiver of detention and demurrage charges till the date of release of the goods i.e., 22.12.2017 within a period of two weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition shall stand closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vsm

To

1.The Joint Commissioner of Customs (Group 1)
Custom House, 60 Rajaji Salai
Chennai - 600 001.

2.The Deputy Commissioner of Customs (Group 1),
Custom House, 60 Rajaji Salai,
Chennai - 600 001.

+1cc to Mr.HARI RADHAKRISHNAN, Advocate, S.R.No. 25047

W.P.No.7830 of 2018

SVI (CO)

TR(18/04/2018)