

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.01.2018
Coram

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

Writ Petition No.33186 of 2017
and
W.M.P.No.36632 of 2017

M/s. Mahi Enterprises,
rep. by its Power of Attorney Mr. Sher Khan ...Petitioner

Vs.

1. The Commissioner of Customs,
Chennai - III (SIIB)
Customs House, No.60, Rajaji Salai,
Chennai - 600 001.
2. The Commissioner of Customs (Group-6),
Customs House, No.60, Rajaji Salai,
Chennai - 600 001.
3. The Additional Commissioner of Customs,
Group - 6, Customs House,
No.60, Rajaji Salai,
Chennai - 600 001. ...Respondents

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Mandamus, directing the respondents to release the goods, viz., 15 cartons of skate board; 15 cartons of skate board; 100 cartons of baby chair; 10 cartons of skate slider; 10 cartons of skate slider, 5 cartons of skate slider; 50 cartons of plastic fruits ; 50 cartons of yoga mat, 50 cartons of yoga mat; 100 cartons of chalk; 54 cartons of brook stick (grade C) ; 26 cartons of watch (unbranded) ; 2 cartons of frame, and 85 cartons of water ball, imported vide Bill of Entry No.3910964, dated 07.11.2017, except 78 cartons, after collecting appropriate and proportionate duty for the total/entire quantity of the goods imported under the customs Act.

For Petitioner : Mr.A.K. Jayaraj

For Respondents : Mr.V. Sundareswaran
Senior Standing Counsel

O R D E R

Heard Mr.A.K. Jayaraj, the learned counsel appearing for the petitioner and Mr.V. Sundareswaran, the learned Senior Standing Counsel for the respondents.

2. The petitioner has filed this Writ Petition, seeking for issuance of a Writ of Mandamus, to direct the respondents to release the goods, viz., 15 cartons of skate board; 15 cartons of skate board' 100 cartons of baby chair; 10 cartons of skate slider; 10 cartons of skate slider; 5 cartons of skate slider; 50 cartons of plastic fruits ; 50 cartons of yoga mat, 50 cartons of yoga mat; 100 cartons of chalk; 54 cartons of brook stick (grade C) ; 26 cartons of watch (unbranded) ; 2 cartons of frame, and 85 cartons of water ball, imported vide Bill of Entry No.3910964, dated 07.11.2017, except 78 cartons, after collecting appropriate and proportionate duty for the total/entire quantity of the goods imported under the customs Act.

3. The case of the petitioner, which appears to be not convincing is that, the supplier had sent wrong shipment of 78 cartons, containing adult toys, for which, they had not placed any order. Therefore, the petitioner would state that they are not seeking for clearance of the 78 cartons, but have requested the respondents to effect clearance of the remaining items, in terms of their representation, dated 12.12.2017. The said representation is now pending before the respondent. Admittedly, it is a case of mis-declaration. Therefore, the petitioner cannot escape by merely stating that, they are concerned about remaining cargo and sofar as 78 cartons, containing adult toys are concerned, they do not want clearance. The question of clearance of the remaining cargo can happen, only if the petitioner seek for re-export of the 78 cartons, which according to them has been wrongly shipped. In fact, an identical prayer was considered by this Court, in the case of (M/s. Durga Trade Link Vs. Commissioner of Customs (Group 7 H and others) in W.A.No.28306 of 2016, and the said Writ Petition was disposed of, by order, dated 29.08.2016, permitting re-export of the cargo. As against the said order, the Revenue preferred Appeal before the Hon'ble Division, and the Division Bench confirmed the order passed in the writ petition, by a judgment, dated 24.11.2016.

4. In the light of the above, the present Writ Petition is disposed, by directing the petitioner to seek for re-export of the 78 cartons of cargo, containing adult toys, and if such application is made, the Authorities are directed to consider

the same, simultaneously, consider the clearance of the remaining cargo, which prima facie appears to be not prohibited goods for import. The above exercise shall be completed within a period of three weeks from the date on which, the petitioner files application for re-export of 78 cartons of adult toys.

5. With the above direction, this Writ Petition is disposed of. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner of Customs,
Chennai - III (SIIB)
Customs House, No.60, Rajaji Salai,
Chennai - 600 001.
2. The Commissioner of Customs (Group-6),
Customs House, No.60, Rajaji Salai,
Chennai - 600 001.
3. The Additional Commissioner of Customs,
Group - 6, Customs House,
No.60, Rajaji Salai,
Chennai - 600 001.

+1cc to Mr.A.K.Jayaraj, Advocate, S.R.No.425

+1cc to Mr.V.Sundareswaran, Advocate, S.R.No.181

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NRK (CO)

RRK (17/01/2018)

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