IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 19.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.A.Nos.2350 to 2352 of 2012
and
M.P.Nos.1,1,1 of 2012

The Director General of Foreign Trade & Ex.Officio,
Additional Secretary to the Govt. India,
Department of Commerce,
Ministry of Commerce and Industry,
Government of India,
New Delhi. .. Appellant in all WA's/3rd Respondent

Vs.

1.M/s.Dimark Traders,
Rep by its Proprietor Mr.S.Umesh,
No.3, Parathasarathi Naidu Street,
Chepauk, Chennai-600 005. .. 1st Respondent
in WA.No.2350/2012/Petitioner

1.M/s.Sree Lakshmi Balaji & Co.,
Rep by its Proprietor, Mr.S.Gowthaman,
10, John Paul Nagar Extn, Mudaliarpet,
Puducherry-605 004. .. 1st Respondent
in WA.No.2351/2012/Petitioner

1.M/s.Sri Venkateswara Reprographics,
Rep by its Proprietor, Mr.P.Rose Reddy,
24/A, West Canal Bank Road,
Kottur, Chennai-85 .. 1st Respondent
in WA.No.2352/2012/Petitioner

2.The Commissioner of Customs
(Seaport-Imports),
Customs House, No.60,
Rajaji Salai,
Chennai-600 001.

3.The Additional Commissioner
of Customs (Group.5)
Customs House, No.60,
Rajaji Salai,
Chennai-600 001. .. 2nd & 3rd Respondents
in all WAs/1st & 2nd Respondent

Prayer: Writ Appeals are filed under Clause 15 of the Letters of Patent Act, against the order dated 10.09.2012, made in M.P.Nos.1,1,1 of 2012 in W.P.Nos.23687, 24090 and 24542 of 2012.

PRAYER IN M.P.NOS.1,1,1 OF 2012 IN W.P.NOS.23687, 24090 AND 24542 OF 2012:

For the reasons stated in the accompanying affidavit it is respectfully prayed that this Hon'ble court may be pleased to direct the 1st and 2nd respondents herein to grant provisional release of the goods covered by Bill of Entry No.7242453, 7712642, 7634583 dt 28.6.2012, 21.08.2012, 10.08.2012 pertaining to the import of 132, 130, 120 Respectively units of Old and Used Digital Multifunction Printing & Copying Machines with Standard Accessories on payment of applicable duties of Customs on the enhanced value by the Chartered Engineer,(in MP.1,1/2012 IN WP.23687/12 & 24090/12) and used digital multifunction Devices in payment by applicable duties of customs on the value to be assessed by chartered Enghneer after examining the goods shortly (in MP.1/12 in WP.24542/12)

PRAYER IN W.P.NOS.23687, 24090 AND 24542 OF 2012:

For the foregoing reasons stated in the accompanying affidavit the petitioner herein most respectfully prayed that this Hon'ble court may be pleased to issue a writ of mandamus or any other appropriate writ, order or direction, most specifically in the nature of a writ of mandamus directing the 1st and 2nd respondents herein to Release the goods viz., 132, 130 units of Old and Used Digital Multifunction Printing & Copying Machines with Standard Accessories, imported vide Bill of Entry No.7242453, 7712642 dt.28.6.2012, 21.08.2012 under Free as Second Hand Capital Goods in terms of para 2.17 of Foreign Trade Policy read with para 2.33 of Hand Book of Procedures without imposing any restriction including Notification of DGFT dated 5th June, 2012, and on payment of applicable duties of Customs on the enhanced value by the Chartered Engineer.(in W.P.Nos.23687, 24090 of 2012) ad 120 units of used Digital Multifunction Device, imported vide bill of entry 7634583 dated 10.08.2012(in WP.24542/12)

For Appellant : No Appearance

For R1 : Mr.Y.Michael Raj for Mr.A.K.Jayaraj

For R2 & R3 : Mr.Rajasekar

COMMON JUDGMENT

(Judgment of this Court was made by S.MANIKUMAR, J.)

Writ Appeals are directed against the final orders in M.P.Nos.1,1,1 of 2012 in W.P.Nos.23687, 24090 and 24542 of 2012, dated 10.09.2012, by which, the Writ Court directed provisional release of the goods, as assessed by the customs authorities concerned and on the respondents depositing an amount equivalent to 25% of the said value, and on the petitioner furnishing the personal bond for the balance 75% of the assessed value of the goods, to the satisfaction of the authority concerned, within a period of two weeks from the date of compliance of the said conditions, by the respondents. Writ Court has made it clear that provisional release of the goods in question would be subject to the adjudication process to be conducted by the authorities concerned, as per the provisions of the Customs Act, 1962. Writ Court has also directed that the writ petitioners/respondent to co-operate fully in the adjudication proceedings to be conducted by such authorities.

2. On this day, when the writ appeals came up for further hearing, Mr.Rajasekar, learned counsel for the second and third respondents submitted that, subsequently writ petitions were heard and disposed of, vide common order in W.P.Nos.28285 of 2012 and etc., batch cases, dated 09.11.2012.

3. At paragraphs Nos.4 to 8, Writ Court, held as hereunder:-

> "4. In the present case, no order has been passed by the Customs Department on the bill of entry having regard to the Notification issued by the DGFT. As to whether the goods are restricted goods or freely importable and whether it should be released on certain terms on adjudication is a matter to be decided by the Competent Authority in accordance with the provisions of the Customs Act taking note of the Foreign Trade Policy as applicable.
>
> 5. Assuming that the goods are restricted and liable for confiscation, the petitioner plea is that the authority should adjudicate the matter and release of the goods, since it falls under the restricted category.

There cannot be a blank embargo on release of the goods which are suffering huge demurrage charges. It does not benefit either the petitioner or the Customs Department.

6. In this case, it is not for the Court to decide as to the applicability and effect of the DGFT Notification at this stage. The nature of order that is to be passed by the Assessing Authority cannot be prescribed as the provisions of the Customs Act enables the Authority to decide the importability of the goods including restriction if any and adjudicate for the purpose of confiscation and release on payment of fine and penalty as is warranted. To this course of action, the Customs Department is agreeable and Mr.Ravi Anantha Padmanabhan on instruction states that the Customs Department will assess and adjudicate the matter, if required, in terms of the provisions of the Customs Act. The said statement is recorded.

7. In such view of the matter, the competent authority of the Customs Department viz., the Assessing Authority is directed to assess the goods in question in terms of the Customs Act read with the relevant Foreign Trade Policy as may be applicable and if it is found that the issue requires adjudication, the same shall be adjudicated taking into consideration the practice that is followed in similar cases without discrimination. Such exercise to be done preferable within a period of three weeks from the date of receipt of a copy of this order. The petitioners in each case represented by their counsel undertake that they will co-operate with the customs department for early disposal of the matter.

8. By consent as above, all the writ petitions stand disposed of in the above terms. The connected miscellaneous petitions are closed. No costs."

4. Interim orders, assailed before us, have merged into final orders in the writ petition. Challenge to the interim orders do not survive.

(i) In South Eastern Coalfields Ltd v. State of M.P. and others reported in (2003) 8 SCC 648, the Hon'ble Supreme Court held as follows:

"The scope of the provision is wide enough so as to include therein almost all the kinds of variation, reversal, setting aside or modification of a decree or order. The interim order passed by the court merges into a final decision. The validity of an interim order, passed in favour of a party, stands reversed in the event of a final decision going against the party successful at the interim stage. Unless otherwise ordered by the Court, the successful party at the end would be justified with all expediency in demanding compensation and being placed in the same situation in which it would have been if the interim order would not have been passed against it."

(ii) In Prem Chandra Agarwal and another v. Uttar Pradesh Financial Corporation and Others reported in (2009) 11 SCC 479, the Hon'ble Supreme Court held that once a final order is passed, all the earlier interim orders merge into the final order, the interim orders cease to exist.

(iii) In State of West Bengal and Others Vs Banibrata Ghosh and Others reported in (2009) 3 SCC 250, the Hon'ble Apex Court held that the Interim Order doest not decide the fate of the parties to the litigation finally, it is always subject to and merges with the final order passed in the proceedings.

5. Inasmuch as the writ petitions have been disposed of, vide order dated 09.11.2012, and in the light of the decisions stated supra, nothing survives in the instant writ appeals filed against interim orders.

6. Accordingly, the Writ Appeals are dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

dm

To

1.The Commissioner of Customs
(Seaport-Imports),
Customs House, No.60,
Rajaji Salai,
Chennai-600 001.

2.The Additional Commissioner
of Customs (Group.5)
Customs House, No.60,
Rajaji Salai,
Chennai-600 001.

3.The Director General of Foreign Trade & Ex.Officio,
Additional Secretary to the Govt. India,
Department of Commerce,
Ministry of Commerce and Industry,
Government of India,
New Delhi.

+1cc to Mr.S.RAJASEKAR, Advocate, S.R.No.29471
+1cc to Mr.A.K.JAYARAJ, Advocate, S.R.No. 29083

W.A.Nos.2350 to 2352 of 2012
and
M.P.Nos.1,1,1 of 2012

RSY(CO)
TR(10/05/2018)