In the High Court of Judicature at Madras

Dated : 13.7.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.14480 to 14483 of 2018

M/s.HLG Trading, rep. by its
Director Shri Hira Lal Goyal ...Petitioner in all the W.Ps

Vs

1. The Commissioner of Customs,
   Chennai II Commissionerate,
   Custom House, No.60, Rajaji
   Salai, Chennai-1.

2. The Deputy Commissioner of
   Customs, Chennai II Commissionerate,
   (Group-7B-7H), Custom House,
   No.60, Rajaji Salai, Chennai-1.

...Respondents in all the W.Ps

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Mandamus

(i) directing the respondents more particularly the 2nd respondent to implement the order of the commissioner of customs (Appeals-II) in Order-in-Appeal No.185/2018 dated 11.5.2018 issued from F.No.C3-II/346/O/ 2018-Sea and release the goods imported vide Bills of Entry Nos.5235697 dated 16.2.2018 and 5339255 dated 24.2.2018 by assessing the Bills of Entry on the basis of the declared values and issuance of a detention certificate for waiver of detention charges from the date of filing of the Bill of Entry till the date of clearance of the goods as held by this Court in several orders (WP.No.14480 of 2018);

(ii) directing the respondents more particularly the 2nd respondent to implement the order of the Commissioner of Customs (Appeals-II) in Order-in-Appeal No.142/2018 dated 11.4.2018 issued from F.No.C3-II/158/O/ 2018-Sea and release the goods imported vide Bills of Entry Nos.5228321, 5228210, 5222833 and 5226650 dated 15.2.2018 by issuance of a detention certificate for waiver of detention charges from the date of filing of the Bill of Entry till the date of clearance of the goods as held by this Court in several orders (WP.No.14481 of 2018);

(iii) directing the respondents more particularly the 2nd respondent to implement the order of the Commissioner of Customs (Appeals-II) in Order-in-Appeal No.184/2018 dated 11.5.2018 issued from F.No.C3-II/281/O/ 2018-Sea and release the goods imported vide Bills of Entry Nos.5344469 dated 24.2.2018 and 5450042 dated 05.3.2018 by issuance of a detention certificate for waiver of detention charges from the date of filing of the Bill of Entry till the date of clearance of the goods as held by this Court in several orders (WP.No.14482 of 2018); and

(iv) directing the respondents more particularly the 2nd respondent to implement the order of the Commissioner of Customs (Appeals-II) in Order-in-Appeal No.144/2018 dated 12.4.2018 issued from F.No.C3-II/155/O/2018 -Sea and release the goods imported vide Bill of Entry No.5235698 dated 16.2.2018 by issuance of a detention certificate for waiver of detention charges from the date of filing of the Bill of Entry till the date of clearance of the goods as held by this Court in several orders (WP.No.14483 of 2018).

For Petitioner : Dr.S.Krishnanand
For Respondents : Mr.G.M.Syed Nurullah Sheriff, SPC

COMMON ORDER

Heard both.

2. The petitioner filed these writ petitions seeking a direction to the respondents to implement the orders passed by the Commissioner of Customs (Appeals-II) vide orders respectively dated 11.5.2018, 11.4.2018, 11.5.2018 and 12.4.2018 and to release the imported goods by assessing the Bills of Entry on the basis of the declared value and issuance of detention certificates for waiver of detention charges from the date of the Bills of Entry till the date of clearance of the goods.

3. The learned Senior Panel Counsel appearing for the respondents submitted that as against the impugned orders, the respondent - Department has a right of appeal before the Customs, Excise and Service Tax Appellate Tribunal and that the Department is in the process of preferring the appeals and in the meantime, if the impugned orders are directed to be implemented, then the interests of the Revenue will be jeopardized.

4. When such a plea was raised on the last hearing date, this Court pointed out to the learned Senior Panel Counsel appearing for the respondents that the consignments are live consignments, that the importer succeeded before the Commissioner of Customs (Appeals-II) and that even if the

Department is permitted to file appeals before the Tribunal, taking note of the current practice that no stay orders are granted especially in the Revenue's appeals, the appeals would be pending for hearing and the live consignments would be held up.

5. The learned counsel for the petitioner would submit that the Department is precluded from filing appeals in the light of the instructions given by the Central Board of Indirect Taxes and Customs dated 11.7.2018, which fixed the monetary limits, below which, the appeals should not be entertained before the Tribunal, the High Courts and the Hon'ble Supreme Court and the monetary limit for filing appeals before the Tribunal is Rs.20 lakhs. It is further submitted that only in two of the cases, the issue pertains to valuation of goods and the remaining two cases pertain to issuance of detention certificate for waiver of detention charges. It is also submitted by the learned counsel for the petitioner that the tax implication is far below the monetary limit prescribed in the instructions given by the Central Board of Indirect Taxes and Customs dated 11.7.2018.

6. The learned Senior Panel Counsel appearing for the respondents submits that it is too early for the petitioner to raise such a contention, as it has to be considered by the Committee of Commissioners as to what would be the impact of the orders passed by the Commissioner of Customs (Appeals-II).

7. In any event, this Court is not inclined to dwell further into it, as this Court is convinced that the goods can be directed to be released and the detention certificates can be issued subject to the condition that the interests of the Revenue are safeguarded. Accordingly, the learned Senior Panel Counsel has got instructions from the Department. The Assistant Commissioner (Legal-II), Chennai Customs has given written instructions vide email dated 12.7.2018 wherein it has been stated that adequate security i.e by executing necessary bond and bank guarantee may be directed to be done for the differential amount of duty involved in these cases. This Court is of the considered view that the question of directing the petitioner to furnish a bank guarantee does not arise since the petitioner succeeded before the Commissioner of Customs (Appeals-II). However, with regard to execution of bond, it appears that the petitioner does not resist such a requirement as long as the consignments are released in terms of the orders passed by the Commissioner of Customs (Appeals-II).

8. In the light of the above, the writ petitions are disposed of with the following directions :

(i) The petitioner is directed to execute a bond in the appropriate form securing the interest of the Revenue and that the release of the goods shall be subject to the outcome of the appeals that may be filed by the Department before the Tribunal;

(ii) On such execution of the bond, the respondent Department is directed to assess the Bills of Entry within three days thereafter and in terms of the assessment, the duty shall be remitted by the petitioner;

(iii) On such remittance, the petitioner is permitted to clear the entire cargo within 10 days from the date of remittance and issuance of out of charge clearance;

(iv) The computation of duty shall be in terms of the orders passed by the Commissioner of Customs (Appeals-II).

(v) The respondents are directed to issue the detention certificates for waiver of detention charges from the date of detention till the date of clearance, which has been directed to be done within 10 days from the date, on which, the duty is remitted; and

(vi) It is made clear that this Court has not rendered any finding on the effect of the instructions issued by the Central Board of Indirect Taxes and Customs dated 11.7.2018 and the issue is left open.

No costs.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

RS

To

1.The Commissioner of Customs, Chennai II Commissionerate, Custom House, No.60, Rajaji Salai, Chennai-1.

2.The Deputy Commissioner of Customs, Chennai II Commissionerate, (Group-7B-7H), Custom House, No.60, Rajaji Salai, Chennai-1.

+1 CC to Mr.G.M.Syed Nurullah Sheriff, Advocate sr 46313.
+2 Ccs to Mr.B. Sathish Sundar, Advocate sr 47411.

WP.Nos.14480 to 14483 of 2018

AD(CO)
SP(31/07/2018)