

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.02.2018

Coram

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

Writ Petition No.1549 of 2018

M/s. Novel Impex
rep. by its Proprietor
Mr. Narendra Kumar Vora.

...Petitioner

Vs.

The Assistant Commissioner of
Customs (Group-3)
No.60, Rajaji Salai,
Customs House,
Chennai - 600 001.

....Respondent

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for records connected with the impugned communication of the respondent herein, comprised in F.No.S.Misc/04/2018-GR.3, dated 19.01.2018, conveying the provisional release order passed by the competent authority under Section 110A of the Customs Act, insofar as it related to condition No.2 for the grant of provisional release of the goods seized and covered under Bill of Entry Nos.3510385 and 3510423 both dated 06.10.2017, and to quash the same and consequently, to modify the condition No.2 of the impugned communication, dated 19.01.2018, imposed for the provisional release of the above goods in terms of the ruling of the Hon'ble Apex Court, in the case of M/s Navshakthi Industries Pvt. Ltd., dated 04.05.2011 and the Customs (Provisional Duty Assessment) Regulations, 1963 as amended 2011.

For Petitioner : Mr.N.Viswanathan

For Respondent : Mr.G.M.Syed Nurullah Sheriff
Senior Panel Counsel

For Intervenor : Mr. V.Sundareswaran

O R D E R

The petitioner has filed this Writ Petition, challenging the order passed by the respondent, dated

19.01.2018, granting provisional release of the goods, covered under the Bills of Entry Nos.3510385 and 3510423, imposing the following conditions:-

- i) Submission of Bond for full value of consignment, i.e., Rs.1,45,44,653/-
and
- ii) Submission of Bank Guarantee for Rs.1,00,00,000/-.

2. The petitioner is not aggrieved by condition No.i). However, he is aggrieved by condition No.ii).

3. The learned counsel appearing for the petitioner would contend that the impugned order, directing the petitioner to furnish bank guarantee for Rupees One Crore is wholly uncalled for, onerous and not sustainable.

4. I have heard the learned counsel appearing for the petitioner for a considerable length of time, not only today, but on earlier occasions as well. Apart from that, I have heard Mr. G.M.Syed Nurullah Sheriff, the learned Senior Standing Counsel for the respondent and Mr. V.Sundareswaran, the learned Senior Standing Counsel for the DRI, who as intervened in the proceedings as well as Mr. G.S.Thakur, Senior Intelligence Officer, Directorate of Revenue Intelligence (DRI) Zonal Unit, Ahmedbad.

5. As rightly pointed out by the learned Senior Standing Counsels for DRI as well as Customs, if the petitioner is aggrieved by the impugned order, he can prefer an Appeal before the Commissioner of Customs (Appeals). This is clear on a reading of Section 128 of the Customs Act, 1962. In the instant case, the petitioner is required to avail such remedy because of the complicated factual situation involved. Therefore, the Court cannot test the correctness of the impugned order, by making a roving enquiry into the factual position, which has been placed before the Court at the instance of the DRI. Therefore, it is fit and proper case, where, the petitioner should avail alternate remedy under the provisions of the Customs Act.

6. Accordingly, this Writ Petition is disposed of, by directing the petitioner to file an Appeal before the Commissioner of Customs (Appeals) within a period of one week from the date of receipt of a copy of this order. If such Appeal is filed, the Commissioner of Customs (Appeals) shall entertain the same, without reference to limitation aspect, provide an opportunity of personal hearing to the authorized representative of the petitioner and decide the Appeal on merits and in accordance with law, as expeditiously as possible, preferably, within a period of three weeks from the date on which, personal

hearing is concluded. It is made clear that the Court has not made any observation or rendered findings on the factual position. No costs.

-s/d-
Assistant Registrar (CCC)

True Copy

Sub-Assistant Registrar

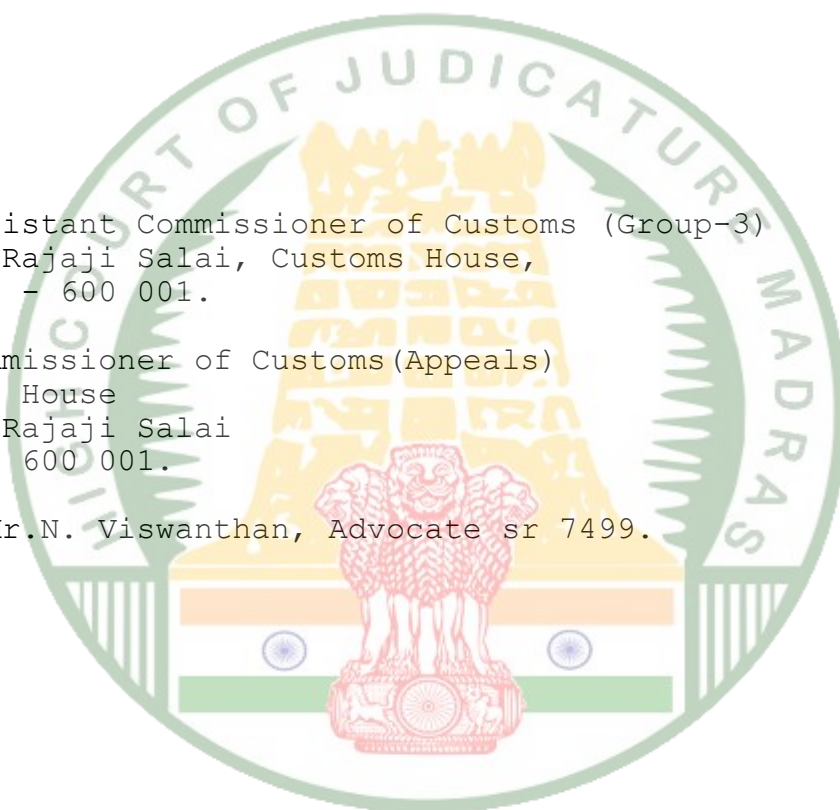
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To

1. The Assistant Commissioner of Customs (Group-3)
No.60, Rajaji Salai, Customs House,
Chennai - 600 001.

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

+1 CC to Mr.N. Viswanthan, Advocate sr 7499.



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SP (02/02/2018)

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