

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.19945 of 2013 & M.P.Nos.1 & 2 of 2013

M/s.Taj Enterprises, rep. by its
Proprietor, Mr.Mohammed Sheriff,
No.2/225, 12th East Cross Street,
3rd Main Road, M.K.B.Nagar,
Chennai-600 039.

... Petitioner

Vs.

1. The Commissioner of Customs
(Appeals), Custom House,
No.60, Rajaji Salai, Chennai-600 001.
2. The Additional Commissioner of
Customs (DEPB), Custom House,
No.60, Rajaji Salai, Chennai-600 001.
3. The Assistant Commissioner of
Customs (DEPB/7H), Custom House,
No.60, Rajaji Salai, Chennai-600 001.
4. The Manager, Indian Bank,
M.K.B.Nagar, Chennai-600 039.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, to call for the records of the third respondent herein, the Assistant Commissioner of Customs (DEPB/7H), Custom House, Chennai, in S.Misc.107/2013-7B, dated 04.07.2013 and quash the same.

For Petitioner : Mr.A.K.Jayaraj

For RR1 to 3 : Mr.T.R.Senthil Kumar,
Senior Panel Counsel

O R D E R

Heard Mr.A.K.Jayaraj, learned counsel for the petitioner and Mr.T.R.Senthil Kumar, learned Senior Panel Counsel for respondents 1 to 3.

2.The petitioner has filed this writ petition challenging the order dated 04.07.2013 passed by the adjudicating authority viz., the Assistant Commissioner of Customs (DEPB/7H), Chennai, by which the said authority informed the petitioner that the Bank guarantee furnished by the petitioner for a sum of Rs.4,25,400/- will be enforced for recovery of the duty in terms of the Order-in-Original dated 28.03.2013. The petitioner has approached this Court by contending that, when the appeal time is yet to be over and the petitioner is entitled to pursue his appellate remedy, order of recovery should not be made.

3.Learned Senior Panel Counsel for respondents 1 to 3 would clarify that the impugned notice for recovery issued well after the expiry of the ninety days period for filing an appeal.

4.Be that as it may, on account of certain subsequent development, now the matter is pending before the CESTAT in Appeal No.C/40862 of 2015, challenging the order passed by the Commissioner of Appeals in Order-in-Appeal No./C.Cus.II No.172/2015 dated 24.02.2015. The sum and substance of the order, which is questioned before the CESTAT is that the petitioner did not comply with the pre-deposit condition within the time permitted. Since the impugned recovery notice has remained stayed for all those years, the stay will continue till the appeal is disposed of by the CESTAT subject to the condition that the petitioner shall keep the Bank guarantee alive, till the disposal of the appeal. Since the appeal is of the year 2015 and the issue involved is not so very complicated, the CESTAT is requested to give priority to the matter and dispose of the same as expeditiously as possible, preferably within a period of four months from the date of receipt of a copy of this order.

With the above observation, this writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
सत्यमेव जयते

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

abr

To

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

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

3. The Assistant Commissioner of
Customs (DEPB/7H), Custom House,
No.60, Rajaji Salai, Chennai-600 001.

+1cc to Mr.A.K.Jayaraj, Advocate, S.R.No.6165

+1cc to Mr.T.R.Senthil Kumar, Advocate, S.R.No.5444

W.P.No.19945 of 2013

NRJK (CO)

CS/28/02/18



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