IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Writ Appeal No.2611 of 2018
and C.M.P.No.21289 of 2018

M/s.PPN Power Generating Company Pvt. Ltd.
Rep. by its Managing Director
Mr.P.Karthik Anand Reddy
Corporate Office - "Sunny Side"
West Block – I Floor
No.8/17, Shafee Mohammed Road,
Thousand Lights,
Chennai – 600 006. ... Appellant

-vs-

1.The Commissioner of Customs
Chennai II Commissionerate
Custom House 60, Rajaji Salai
Chennai - 600 001.

2.The Assistant Commissioner of Customs
(Group 6 & Project Import)
Custom House, 60 Rajaji Salai,
Chennai – 600 001. ... Respondents

Prayer: Writ Appeal filed under Clause 15 of Letter Patent against the order dated 08.10.2018 passed in Writ Petition No.14365 of 2018.

WP.NO.14365/2018:

Praying to Calling for the records pertaining to the impugned show cause notice dated 22.05.2018 in F.No. S.Misc.69/2018 - Group 6 issued by the 2nd respondent with consequently direction to the 2nd respondent to refund the security deposit of Rs.84,00,000/- return the bank guarantees executed by the petitioner for an amount of Rs.13.77 crores and cancel and bond executed by the petitioner for an amount of Rs.6,38,05,72,000/- after finalizing the provisional assessments.

For Appellant : Mr.Hari Radhakrishnan

For Respondents: Mr.A.P.Srinivas
Senior Standing Counsel

J U D G M E N T

[Judgment of the Court was made by T.S.SIVAGNANAM, J]

This appeal has been filed by the writ petitioner challenging the order in W.P.No.14365 of 2018, by which, the learned Single Bench disposed of the writ petition by issuing directions which are contained in Paragraph 15 of the impugned Order. For better appreciation, the same is quoted herein below:-

> "15. Accordingly, all these writ petitions are disposed of in the following terms:-
>
> (a) The petitioner shall furnish their reply to the impugned proceedings dated 22.05.2018 within a period of two weeks from the date of receipt of a copy of this order.
>
> (b) On receipt of such reply, the second respondent shall given an opportunity of personal hearing to the petitioner by fixing a date within a period of two weeks thereafter.
>
> (c) On completion of such personal hearing and on perusing the materials placed by the petitioner, the second respondent shall complete the provisional assessment within a period of four week thereafter.
>
> (d) If the petitioner succeeds before the second respondent, the cash deposit, bank guarantees and other bond shall be released forthwith.
>
> (e) On the other hand, if the petitioner fails to succeed before the second respondent, the second respondent shall not invoke the bank guarantees within the time prescribed for filing an appeal against the said order.
>
> (f) In that event, it is open to the petitioner to seek appropriate interim relief before the Appellate Authority including for release of bank guarantee by making interim application, after complying with the statutory requirements of pre-deposit."

2. After hearing Mr.Hari Radhakrishnan, learned counsel appearing for the appellant and Mr.A.P.Srinivas, learned Senior

Standing Counsel accepting notice on behalf of the respondents, we find that substantial part of the direction issued by the learned Single Bench is just and proper. This is so because what was impugned before the learned Single Bench was a show cause notice dated 22.05.2018 proposing to demand differential duty to the tune of Rs.9.54 Crores under 18 (2) of the Customs Act, 1962 (for brevity the "Act") along with applicable interest under 18(3) of the said Act.

3. The appellant challenged the show cause notice on several grounds and in particular that it is inordinately delayed and delay in issuance of the show cause notice would vitiate the entire proceedings. The appellant contended that they had effected a Project Import on 13.03.1999, installation was completed on 26.12.2002 and complied with all formalities and in 2018, the present impugned show cause notice was issued alleging under valuation of a few of the items which were imported by the appellant.

4. It is the case of the revenue that the declared value of certain products which were imported by the appellant were lesser than the procurement price of the foreign supplier and therefore, they alleged that there is under valuation.

5. The learned counsel for the appellant would submit that the appellant was engaged in the production of power from Naphtha and the procurement price of Naphtha was much higher and as a result of which, the Tamil Nadu Electricity Board was not inclined to purchase power from the appellant, owing to which, the production activities were stopped during 2016, but the factory is being maintained. Therefore, it is submitted that at this distance of time, the department could not have issued the show cause notice and keeping the provisional assessment pending for 15 years is illegal.

6. The learned counsel for the appellant referred to the Board circular bearing Circular No.22/2011-Cus, wherein, the authorities were directed not to insist upon renewal of Bank Guarantee, if the assessment is not completed within a period of six months. However, the circular draws certain exceptions particularly in cases where investigation is conducted by DRI, which has occurred in the appellant's case. Therefore, the learned Single Bench was of the opinion that circular may not have any assistance to the case of the appellant.

7. In our considered opinion, though the case may be one of investigation done by the DRI, yet final assessment should be done within a reasonable time. In the opinion of the Central Board, 6 months' is reasonable time under normal circumstances. In our prima facie view, period of 15 years cannot be considered as a reasonable time. But we refrain from rendering

any finding on the said issue. In fact, the learned Single Bench also records that the respondents have taken enormous time in completing the provisional assessment. In such circumstances, we are of the view that some relief should be granted to the appellant especially when they have effected cash deposit of Rs.84 lakhs, when they have imported the products and furnished Bank Guarantee of Rs.13.77 Crores. The Bank Guarantee has been kept renewed since then and according to the learned counsel for the appellant, bank charges itself is more than Rs.2.35 crores. Assuming without admitting upon adjudication of the show cause notice, the proposal therein is confirmed, the entire liability may be around Rs.11 crores and assuming the assessee files appeal, the minimum pre-deposit required to be made would be Rs.7.5% of the disputed demand.

8.Thus, taking into consideration the peculiar facts and circumstances of the case, we are of the view that partial relief can be granted to the appellant so as to enable them to tide over the financial crisis, which they are stated to be undergoing at present. However, we are convinced that the other directions issued by the learned Single Bench directing the appellant to participate in the adjudication process would not require interference.

9. Accordingly, we partly allow this appeal to the extent indicated below:-

a) The order and direction issued by the learned Single Bench in Paragraph 15 (a) (b) & (c) are confirmed.

b) The directions ordered in Paragraph 15 (d), (e) & (f) stands modified as follows:-

The appellant is directed to remit a sum of Rs.16 lakhs as cash deposit so that the cash deposit to be retained by the department will be rounded off to Rs.1 Crore as already Rs.84 lakhs has been remitted by the appellant. The appellant need not renew the Bank Guarantee and the department is directed to intimate the petitioner's bankers about the above direction within a period of two weeks from the date on which the appellant remits the sum of Rs.16 lakhs, on compliance of which, the Bank Guarantee shall stand revoked.

c) We direct the adjudicating authority to complete the adjudication process as expeditiously as possible and in any event not later than three months from the date of receipt of the copy of this judgement subject to the assessee extending full co-operation in the adjudication process.

No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

gsi/svki

To

1.The Commissioner of Customs
Chennai II Commissionerate
Custom House 60 Rajaji Salai
Chennai - 600 001.

2.The Assistant Commissioner of Customs
(Groups 6 & Project Import)
Custom House, 60 Rajaji Salai
Chennai – 600 001.

+1cc to Mr.Hari Radhakrishnan, Advocate sr.no.82488
+1cc to Mr.A.P.Srinivas, Advocate sr.no.82198

W.A.No.2611 of 2018

na(co)
nr 26/12/2018