



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.09.2018

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)Nos.11640 to 11643 of 2013
and
M.P. (MD) .Nos.1, 1,1 and 1 of 2013

M/s.Top Wise (Asia) Limited,
L-4, Ground Floor,
No.8, Humphrey's Avenue,
TST, Kowloon, Hong Kong,
through its Authorized representative,
Sh.Rajeev Arora,
S/o.Late.Shriram Khattar,
R/o.A-502, Navmangalam Apartment,
City Light Road,
Surat - 395 007.

.. Petitioner in
W.P. (MD) .No.11640 of 2013

M/s.Sunland Trading Limited,
20/F,Champion Building,
287-291, Des Vocus Road Central,
Sheung Wan, Hong Kong,
through its Authorized representative,
Sh.Rajeev Arora,
S/o.Late.Shriram Khattar,
R/o.A-502, Navmangalam Apartment,
City Light Road,
Surat - 395 007.

.. Petitioners in
W.P. (MD) .Nos.11641 & 11642/2013

M/s.Bolong International Supply Chain,
Management Group Company Limited,
FLAT/RM 1919 Nan Fung Centre,
264-298, Castle Peak Rd,
Tsuen Wan, China.
Through its Authorized representative,
Sh.Rajeev Arora,
S/o.Late.Shriram Khattar,
R/o.A-502, Navmangalam Apartment,
City Light Road,
Surat - 395 007.

.. Petitioner in
W.P. (MD) .No.11643 of 2013



Vs.

The Commissioner of Customs,
Customs House,
Near Harbour Estate,
Tuticorin - 628 004.

.. Respondent in
all these petitions.

COMMON PRAYER: Writ Petitions have been filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, to direct the respondent herein to issue a show cause notice to the petitioner company in the adjudication proceedings with respect to the goods covered under Container Nos.APHU-655200-3, APHU-624303-0, APHU-633191-2 & APHU 637811-8 respectively.

For Petitioner in all

the petitions

: Mr.P.Saravanan

For Respondent in
all the petitions

: Mr.S.Gurumoorthy,
CGSC

COMMON ORDER

These Writ Petitions have been filed by the petitioners for issuance of a Writ of Mandamus, to direct the respondent herein to issue a show cause notice to the petitioners / company in the adjudication proceedings with respect to the goods covered under Container Nos.APHU-655200-3, APHU-624303-0, APHU-633191-2 & APHU 637811-8 respectively.

2. Since the issue involved in all these writ petitions are one and the same, they were heard together and are disposed of by way of this common order.

3. According to the petitioners, they sent certain cosmetic products and unbranded mobile accessories to the Tuticorin Port through Green Port Shipping Agencies, in January 2011. Till date, they could not fetch any buyer. As per Section 45 of the Sale Goods Act, 1930, the petitioners are "unpaid seller". Under Section 124 of the Customs Act, no order of confiscation of the goods can be issued without a mandatory notice issued to the owner of the goods. If the respondent gives an opportunity of personal hearing, the petitioners would demonstrate that they are "unpaid seller" of the said goods and their other claims.

4. According to the respondent, M/s.Green Port Shipping Agencies, Tuticorin had attempted to import branded fake cosmetic



items and mobile accessories by highly under valuing the same and in violation of the Intellectual Property Rights of the holders. The petitioners are not "unpaid seller".

5. It is seen from the record that since this Court had granted an interim order of stay in passing the final order alone, till date no final order is passed in the adjudication proceedings.

6. Considering the facts and circumstances of the case and also considering the fact that this Court cannot conduct any roving enquiry into the factual matrix and to meet the ends of justice, this Court, without going into the merits of the case, directs the respondent to consider the claim of the petitioners by providing an opportunity of personal hearing and to first decide the claim of "unpaid seller" and then, other claims and pass appropriate orders on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order.

7. These Writ Petitions stand disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

Sub Assistant Registrar (CS-II)

To
The Commissioner of Customs,
Customs House,
Near Harbour Estate,
Tuticorin - 628 004.

+1 CC To MR.P.SARAVANAN, Advocate SR. NO. 85260

Common Order made in
W.P (MD) Nos. 11640 to 11643 of 2013
19.09.2018

GCG
TR/SKN/SAR-II (08.10.2018) 3P 3C