

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Special Original Jurisdiction)

Monday, the Twenty Fifth day of February Two Thousand Nineteen

PRESENT

THE HON`BLE MR JUSTICE S.MANIKUMAR

and

THE HON`BLE MR.JUSTICE SUBRAMONIUM PRASAD

WMP.Nos.5926, 5928, 5929 and 5930 of 2019

in WP.No.1878 of 2019

M/S.ADYAH SOLAR ENERGY PRIVATE LTD., 138, ANSAL CHAMBERS-II,
BHIKAJI CAMA PLACE, NEW DELHI-110 066,
REPRESENTED BY AUTHORISED SIGNATORY
MR.ASWIN KUMAR

[PETITIONER IN ALL THE
PETITIONS]

Vs

1 UNION OF INDIA
UNDER SECRETARY, MINISTRY OF FINANCE,
NORTH BLOCK, NEW DELHI-110 001.

[RESPONDENTS IN ALL THE
PETITIONS]

2 DIRECTOR GENERAL (SAFEGUARDS)
DIRECTORATE GENERAL OF TRADE REMEDIES,
4TH FLOOR, JEEVAN TARA BUILDING, PARLIAMENT
STREET, NEW DELHI - 110 001.

3 ASSISTANT COMMISSIONER OF CU
STOMS,, CUSTOMS HOUSE, 60, RAJAJI SALAI,
CHENNAI-600 001.

4 COMMISSIONER OF CUSTOMS,
CUSTOMS HOUSE, 60, RAJAJI SALAI,
CHENNAI - 600 001.

5 DIRECTORATE GENERAL OF SYSTE
MS AND, DATA MANAGEMENT, HOTEL SAMRAT,
CHANAKYAPURI, NEW DELHI - 110 021.

6 MESSRS JUPITER SOLAR POWER L
IMITED, REP. BY ITS VICE PRESIDENT MR.KISHAN
KOTHARI, UNNAYANAM, 20-A, ASHUTHOSH
CHOWDHURY AVENUE, KOLKATA-700019.

7 MESSRS. INDOSOLAR LIMITED

REP. BY ITS MANAGING DIRECTOR MR.HULAS RAUL
GUPTA, NO.3C/1, UDYOG VIHAR, ECO TECH-II,
DISTRICT-GAUTAMBUDH NAGAR, GREATER NOIDA-
201306, U.P.

Petitions praying that in the circumstances stated therein and in the respective affidavits filed therewith the High Court will be pleased to

1 WMP No.5926 of 2019

To grant an interim order directing the Respondent No.3 to release the goods under the impugned Bill of Entry bearing No.2075130 dated 15.2.2019 issued by the Respondent No.3, without insisting on payment of safeguard duty,

2 WMP No.5928 of 2019

To grant an interim order directing the Respondent No.3 to release the goods under the impugned Bill of Entry bearing No.2074962 dated 15.2.2019 issued by the Respondent No.3, without insisting on payment of safeguard duty,

3 WMP No.5929 of 2019

To grant an interim order directing the Respondent No.3 to release the goods under the impugned Bill of Entry bearing No.2099201 dated 18.2.2019 issued by the Respondent No.3, without insisting on payment of safeguard duty,

4 WMP No.5930 of 2019

To grant an interim direction to the Respondent No.3 to permit release of goods of the nature covered by the impugned BoEs, subsequently imported, without insisting on payment of safeguard duty, respectively.

Order : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.SUJIT GHOSH for M/S.ARUN KARTHIK MOHAN, Advocate for the petitioner and of M/S.V.CHANDRASEKAR, SPC for 1, 2 & 5 respondents in all the petitions and of M/S.V.SUNDARESWARAN, Advocate for the 3 & 4 respondents in all the petitions and of M/S.C.SEETHAPATHY, Advocate for the 6 & 7 respondents in all the petitions the court made the following order:-

(Order of the Court was made by S.MANIKUMAR, J.)

In W.M.P.Nos.5926, 5928 and 5929 of 2019 in W.P.No.1878 of 2019, the petitioner has sought for an interim order, directing the Assistant Commissioner of Customs, Customs House, Chennai/respondent No.3, to release the goods, under the impugned Bill of Entries, bearing Nos.2075130, dated 15.02.2019; 2074962, dated 15.02.2019; and 2099201, dated 18.02.2019 respectively, issued by the respondent No.3, without insisting on payment of safeguard duty, pending disposal of the above writ petitions.

2. In W.M.P.No.5930 of 2019 in W.P.No.1878 of 2019, the petitioner has sought for an interim direction to respondent No.3, to permit release of goods of the nature covered by the impugned Bill of Entries, subsequently imported, without insisting on payment of safeguard duty, till disposal of the writ petition.

3. Attention of this Court was invited to an order, made in W.P.No.1824 of 2019, dated 18.02.2019, on the file of the High Court of Andhra Pradesh, wherein the Hon'ble Division Bench has directed to pay 50% of the duty demanded by the respondents, through Bill of Entry, dated 09.02.2019 and provide bond for paying the balance 50% together with interest in the event of the petitioner therein is not successful in the writ petition, with which the goods now allowed to be removed. The said order reads thus:-

"Heard Mr.Sujit Ghosh, learned counsel for the petitioner, Mr.B.Krishna Mohan, learned Assistant Solicitor General of India for respondents 1, 2 and 5 and Mr.M.V.J.K.Kumar, learned standing counsel for respondents 3 and 4.

The petitioner assails Notification No.01/2018-Customs (SG), dated 30.07.2018 and final findings F.No.22/1/2018-DGTR, dated 16.07.2018 issued by the respondents 1 and 2 respectively as illegal and unconstitutional etc. The petitioner assails the order issued by respondents 3 to 5 in BOE dated 09.02.2019 imposing safeguard duty pursuant to the impugned notification as illegal etc.

Mr.Sujit Ghosh, for the petitioner contends that the notifications impugned in the writ petition in its entirety are contrary to the International Covenant namely Paris Agreement dated 12.12.2015 and also Article 51 of the Constitution of India. Succinctly stated the factual premise on which the ground of public interest is put forward by him and that the safeguard duty, it imposed, will not make the activity undertaken by the petitioner economically viable thereby resulting in the escalation of cost of power generation through solar renewable energy. Though a few submissions touching upon the obligation of the respondents to act in furtherance of the International Covenant dated 12.12.2015 have been made for the present, we refrain from advertng to these submissions for the respondents pray time for filing counter affidavits.

It is brought to our notice that the notifications impugned in the writ petition are subject matter of challenge in the High Court of Gujarat at Ahmedabad and

in the High Court of Madras. The conditional interim orders passed in by the High Courts are brought to our notice. Though some effort has been made to convince this Court to consider passing an interim order on the lines of the order passed by the Gujarat High Court, after taking note of the objections taken by the learned standing counsel, we are of the view that at this stage, we keep in perspective the obligation of the petitioner to pay duty as per the applicable slab and provide bond so that the goods, even if allowed to be removed by the petitioner, the respondents will not suffer injury or loss.

The request of the learned counsel for the respondents to grant time for two weeks to file counter is accepted.

Having regard to the above circumstances and allow the petitioner to remove goods from the warehouse, the petitioner shall deposit 50% of the duty demanded by respondents through BOE, dated 09.02.2019 and provide bond for paying the balance 50% together with interest in the event the petitioner is not successful in the writ petition. Upon compliance with the above condition, the respondents permit the petitioner to remove the goods covered by BOE dated 09.02.2019 from the warehouse.

After the order is dictated, it is brought to our notice that yet another consignment is landed at the port and this consignment is subjected to the same tariff as is impugned in the writ petition. The interest of the revenue since is substantially protected by imposing the conditions, it is made clear that the consignments, if any, are received by the petitioner in the interregnum, the petitioner is allowed to remove the goods from the warehouse subject to the very same conditions i.e. 50% of the duty demanded by respondents through BOE, dated 09.02.2019 and provide bond for paying the balance 50% together with the interest in the event the petitioner is not successful in the writ petition, with which the goods now allowed to be removed.

Post on 06.03.2019."

4. Mr.V.Sundareswaran, learned counsel for the revenue submitted that the bank guarantee, directed to be furnished, be periodically renewed.

5. Though, earlier we have not indicated the duration of bank guarantee, we hereby make it clear that bank guarantee should be directed to be given for a period of two years and the same be renewed, before the period of expiry.

6. Earlier, when the petitioner has sought for stay of the notification in W.M.P.Nos.2078 and 2079 of 2019, and provisional release of goods, without insisting on payment of safeguard duty, this Court declined to grant stay. However, this Court ordered provisional release of goods, covered under the Bill of Entries, dated 08.02.2019, by furnishing a bank guarantee for 50% of the amount, as safeguard duty and bond for the remaining amount.

7. Though in the instant W.M.P.Nos.5926, 5928 and 5929 of 2019 in W.P.No.1878 of 2019, the petitioner has sought for a direction against the Assistant Commissioner of Customs, Customs House, Chennai/third respondent herein, impleading M/s.Jupiter Solar Power Ltd., Kolkata and M/s.Indosolar Ltd., v. Greater Noida, respondents 6 and 7, for releasing the goods, under the Bills of Entry, bearing Nos.2075130, dated 15.02.2019; 2074962, dated 15.02.2019; and 2099201, dated 18.02.2019 respectively, without insisting on payment of safeguard duty, pending disposal of the writ petition, we are not inclined to grant the same, as prayed for, but propose to pass an order, as hereunder:-

"Keeping in mind the totality of the facts and circumstances, we permit the petitioner to clear the goods covered under Bill of Entry Nos.9988702, 9988620, 9990347, 9988642 and 9990330, all dated 8.2.2019, by furnishing bank guarantee for 50% of the amount of safeguard duty and furnish a bond for the remaining amount."

8. In W.M.P.No.5930 of 2019 in W.P.No.1878 of 2019, the petitioner has sought for a omnibus direction against the Assistant Commissioner of Customs, Customs House, Chennai/third respondent herein, to permit release of goods of the nature covered by the impugned Bill of Entries, subsequently imported, without insisting on payment of safeguard duty, till the disposal of the writ petitions.

9. Mr.C.Seethapathy, learned counsel for the respondents 6 and 7, vehemently opposed such a prayer being ordered, on the grounds inter alia that without payment of safeguard duty, import being permitted. He further submitted that the grant of such omnibus prayer would be amounting to granting stay of the impugned notification and for the abovesaid reasons, prayer has to be rejected.

10. There is no direct payment of safeguard duty on the goods imported against the Bills of Entry. Nevertheless, this Court, taking note of the safeguard to be provided, directed furnishing of a bank guarantee, without insisting on payment of 50% as safeguard duty and the remaining 50% by bond.

11. At this juncture, it is also to be noted that though the respondents were parties in Special Civil Application No.20957 of 2018, on the file of High Court of Gujarat at Ahmedabad and that the petitioner therein has been permitted to provisional release of goods, under the Bill of Entries, only on execution of bond. No materials have been placed, before us as to whether any appeal has been filed by the respondents or not.

12. High Court of Andhra Pradesh, has ordered provisional release of goods, on payment of 50% as safeguard duty to the Customs Department and on execution of a bond, for the remaining balance.

13. As rightly contended, the petitioner cannot be permitted to import, without insisting on payment of safeguard duty. Though in all the four applications, the petitioners have sought for such a direction i.e., provisional release of goods, covered under the Bills of Entry Nos.2075130, 2074962 and 2099201, dated 15.02.2019 and 18.02.2019 and Bills of Entry to be submitted subsequently, whenever the goods were imported, we are not inclined to grant relief, as prayed for. Instead, to maintain consistency, balance of convenience, safeguard the interest of the revenue, we deem it fit to order provisional release of goods under the Bills of Entry and also the subsequent Bills of Entry to be submitted, subject to the condition that the petitioner has to furnish bank guarantee for 50% of the amount demanded, as safeguard duty for a period of two years and be renewed before the expiry, and also to furnish a bond, for the remaining balance 50%, under each Bills of Entry.

14. With the above directions, W.M.P.Nos.5926, 5928, 5929 and 5930 of 2019, are ordered.

-sd/-
25/02/2019

/ TRUE COPY /

Sub Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

1 UNION OF INDIA
UNDER SECRETARY, MINISTRY OF FINANCE,
NORTH BLOCK, NEW DELHI-110 001.

2 DIRECTOR GENERAL (SAFEGUARDS)
DIRECTORATE GENERAL OF TRADE REMEDIES,
4TH FLOOR, JEEVAN TARA BUILDING, PARLIAMENT
STREET, NEW DELHI - 110 001.

3 ASSISTANT COMMISSIONER OF CUSTOMS,
CUSTOMS HOUSE, 60, RAJAJI SALAI,
CHENNAI-600 001.

4 COMMISSIONER OF CUSTOMS,
CUSTOMS HOUSE, 60, RAJAJI SALAI,
CHENNAI - 600 001.

5 DIRECTORATE GENERAL OF SYSTEMS
AND, DATA MANAGEMENT, HOTEL SAMRAT,
CHANAKYAPURI, NEW DELHI - 110 021.

C.C. to M/S.ARUN KARTHIK MOHAN Advocate on payment of necessary
charges

C.C. to M/S.V.CHANDRASEKAR, SPC Advocate on payment of necessary
charges

C.C. to M/S.V.SUNDARESWARAN, Advocate on payment of necessary
charges

C.C. to M/S.C.SEETHAPATHY, Advocate on payment of necessary
charges

Order

in

WMP.Nos.5926, 5928, 5929 and 5930 of 2019

in WP.No.1878 of 2019

Date :25/02/2019

From 26.2.2001 the Registry is issuing certified
copies of the Interim Orders in this format
KP(26/02/2019) (IT)