In the High Court of Judicature at Madras
Dated : 08.4.2019
Coram
The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN
Writ Appeal No.1296 of 2019 & CMP.No.8827 of 2019

The Commissioner of Customs,
Chennai II Commissionerate,
Customs House, No.60,
Rajaji Salai, Chennai-1. …Appellant

Vs

M/s.Paragon Chemicals, rep.by its
Parnter Ajit Kankariya …Respondent

APPEAL under Clause 15 of the Letters Patent against the order dated 14.2.2019 made in WP.No.34166 of 2018.

WP.NO.34166/2018:

Petition under Article 226 of the Constitution of India praying for the issuance of Writ of Mandamus Directing the respondents to release the cargo covered under the Bil of Entry B.E.No.6065045 dated 20/04/2018 which was assessed and Customs duty of Rs.3,81,63/- and IGST of Rs.14 49 177-00 and education Cess Rs.38 156-00 paid 20-4-2018

For Appellant : Mr.V.Sundareswaran, SPC

For Respondent : Mr.K.Jayachandran & Mudimannan

Judgment was delivered by T.S.SIVAGNANAM,J

We have heard Mr.V.Sundareswaran, learned Senior Panel Counsel appearing for the appellant and Mr.K.Jayachandran & Mudi Mannan, learned counsel accepting notice for the respondent.

2. This appeal is directed against the order dated 14.2.2019 made in W.P.No.34166 of 2018 filed by the respondent herein.

3. In the said writ petition, the respondent herein - writ petitioner sought for the issuance of a Writ of Mandamus to direct the respondent to release the cargo covered under the Bill of Entry dated 20.4.2018.

4. Earlier, the respondent herein - writ petitioner approached this Court for an identical relief by filing W.P.No.15966 of 2018 and one of us (TSSJ), while sitting singly, considered the prayer sought for in the earlier writ petition and held that the prayer for provisional release could not be

entertained. However, the Writ Court opined that a copy of the test report should be made available to the respondent herein – writ petitioner and accordingly issued a direction on 02.8.2018 by disposing of the earlier writ petition. The said direction was issued to facilitate the respondent herein – writ petitioner to file an appeal as against the test report since the test report dated 27.4.2018 stated that the sample, which was collected from the consignment, has the characteristics of kerosene.

5. The respondent herein – writ petitioner, vide the Bill of Entry dated 20.4.2018, described the goods as mineral oil (industrial use only). The Department issued a show cause notice dated 26.10.2018, in which, there were proposals to declare the description of the goods as kerosene, to reject the classification adopted by the respondent herein – writ petitioner, to order confiscation of the seized kerosene under Sections 111(d) and 111(m) of the Customs Act, 1962 and to impose penalty under Sections 112 and 114AA of the said Act. The respondent herein – writ petitioner did not file any reply to the said show cause notice, but immediately approached this Court by filing the present writ petition namely WP.No.34166 of 2018.

6. As pointed out by us earlier, the prayer in the present writ petition is identical to that of the prayer in the earlier writ petition, in which, the relief sought for was not granted. Therefore, the present writ petition for an identical relief is barred by the principles of constructive res judicata. This would be sufficient to dismiss the present writ petition filed by the respondent herein – writ petitioner.

7. The respondent herein – writ petitioner disputes the classification adopted by the Department and also the test report.

8. However, this is not the forum, before which, they can dispute the test report nor the stand taken by the Department.

9. The Department was of the view that the goods imported were kerosene and that it could be imported only by oil companies such as Indian Oil Corporation, etc. In such circumstances, this Court is of the considered view that an order of provisional release should not be entertained at this juncture and more particularly, when the show cause notice dated 26.10.2018 has already been issued.

10. Furthermore, the learned counsel for the respondent herein – writ petitioner submits that a reply has been submitted by them.

11. The learned Senior Standing Counsel for the appellant, on instructions, submits that if the respondent herein – writ petitioner cooperates, the adjudication will be completed within a short span of time.

12. Considering these facts, this Court, while allowing the appeal and setting aside the order passed by the learned Single Judge in the present writ petition, is inclined to issue an appropriate direction for the conclusion of adjudication of the said show cause notice.

13. In the result, the above writ appeal is allowed, the order dated 14.2.2019 passed by the learned Single Judge in WP.No.34166 of 2018 is set aside and the respondent herein - writ petitioner is directed to complete the adjudication of the said show cause notice dated 26.10.2018 on or before 16.4.2019. However, this direction is issued with a condition that the respondent herein - writ petitioner shall cooperate in the adjudication. No costs. Consequently, the connected CMP is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

RS

TO:

The Commissioner of Customs,
Chennai II Commissionerate,
Customs House, No.60,
Rajaji Salai, Chennai-1.

+1cc to Mr.K.Jayachandran, Advocate sr.no.33899
+1cc to Mr.V.Sundareswaran, Advocate sr.no.33868

WA.No.1296 of 2019&
CMP.No.8827 of 2019

nr 08/04/2019