

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Special Original Jurisdiction)

Wednesday, the Eighth day of May Two Thousand Nineteen

PRESENT

THE HON `BLE MR JUSTICE S.VAIDYANATHAN

and

THE HON`BLE MR.JUSTICE SUBRAMONIUM PRASAD

WMP.Nos.14113, 14114, 14117, 14120, 14121 and 14122 of 2019

In W.P.Nos.14043, 14047 and 14050 of 2019

M/S.TALETTUTAYI SOLAR PROJECTS [PETITIONER IN ALL THE
TWO PRIVATE LIMITED, UNIT NO.001, PETITIONS]
GF, TOWER-C, UNITECH CYBER PARK, SECTOR 39,
GURUGRAM -122 001, REP.BY ITS AUTHORIZED
SIGNATORY, A.MICHAEL K.A.ROCHE

Vs

1 UNION OF INDIA [RESPONDENTS IN ALL THE
UNDER SECRETARY, MINISTRY OF FINANCE, PETITIONS]
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.

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.14113 of 2019

To grant an interim order directing the respondent No.3 to release goods under the impugned Bill of Entry bearing No.3083733 dated 03.05.2019 issued by the respondent No.3, without insisting on payment of safeguard duty and component of safeguard duty forming a part of the IGST,

2 WMP No.14114 of 2019

To grant an interim order directing the respondent No.3 to release goods for future Bills of Entries which may be filed by the petitioner without insisting on payment of safeguard duty and component of safeguard duty forming a part of the IGST,

3 WMP No.14117 of 2019

To grant an interim order of stay of impugned final findings no.F.No.22/1/2018 - DGTR dated 16.07.2018 issued by the respondent No.2

4 WMP No.14120 of 2019

To grant an interim injunction, restraining the respondents, their officers, employees, subordinates, agents or any other persons acting or claiming to act under them from taking any action under the impugned notification No.1/2018 -Cus (SG) dated 30.07.2018 for levy of safeguard duty and permit the importer to clear the goods on a provisional basis under section 18 of the Customs Act without insistence of payment of safeguard duty under the impugned notification,

5 WMP No.14121 of 2019

To grant an interim order of stay of the operation of the impugned notification No.1/2018 -Cus (SG) dated 30.07.2018 issued by the respondent No.1

6 WMP No.14122 of 2019

To grant an interim order directing the respondent No.5 to make appropriate changes in the EDI system such that the liability to pay safeguard duty is not automatically fastened on the bills of entry

Order : These petitions coming on for orders upon perusing the petition and the respective affidavits filed in support thereof and upon hearing the arguments of M/S.SUJIF GHOST for M/S.ARUN KARTHIK MOHAN, Advocate for the petitioner in all the petitions and of M/S.RAJESHVIVEKANNANTHAM, Advocate for the 1st respondent in all the petitions and of M/S.APARNA NANDAKUMAR, Advocate for the 3 & 4 respondent in all the petitions the court made the following order:-

(Order of the Court was made by SUBRAMONIUM PRASAD,J.)

The petitioner by filing the writ petition in W.P.No.14043 of 2019 is challenging the Bill Of Entry bearing No.3083733 dated 03.05.2019, issued by the third respondent, through their website, to the extent it seeks to impose safeguard duty, on the ground that the same is illegal, arbitrary, without authority of law.

2.The petitioner by filing the writ petition in W.P.No.14047 of 2019 is challenging the final findings no.F.No.22/1/2018 - DGTR dated 16.07.2018 issued by the second respondent on the ground that the same is illegal, arbitrary, unconstitutional, without authority of law and in contravention of the Customs Tariff Act read with the Safeguard Duty Rules.

3.The petitioner by filing the writ petition in W.P.No.14050 of 2019 is challenging the Notification No.1/2018 (SG) dated 30.07.2018 issued by the respondent no.1 on the ground that the same is illegal, arbitrary, without authority of law.

4.This Court by order dated 15.02.2019 in W.M.P.Nos.2078 etc., batches in WP.Nos.1878, 1886, 1913, 1920 & 1929 of 2019, others while dealing with an identical matter pertaining to levy of safeguard duty for the same goods which are being imported, has passed an interim order, the relevant portion of which reads as follows:

"25. Going through the material on record and considering the submission of the parties, primarily and at this stage, it cannot be said that the orders, dated 16.07.2018 and 30.07.2018, are perverse and completely without application of mind and the same cannot be stayed and the petitioner cannot be permitted to get the goods released by not paying the safeguard duty. The Hon'ble Supreme Court after considering all the materials and the notification, by its order dated 10.09.2019 made in S.L.P. (Civil) Nos.24009-10/2018 decided to stay the order dated 23.07.2018 passed by the High Court of Orissa in W.P. (Civil) No.12817 of 2018. There is nothing in the order dated 28.12.2018 of the Gujarat High Court in R/Special Civil Application No.20957 of 2018, which would show that the Gujarat High Court considered the effect of the order of the Hon'ble Supreme Court, while permitting the petitioner in the writ petition to clear the goods only on furnishing bonds. The penalty for contravening terms of a bond is only payment of an amount up to a maximum of Rs.50,000/-.

26. 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 08.02.2019, by furnishing bank guarantee for 50% of the amount of safeguard duty and furnish a bond for the remaining amount."

5. Another order dated 25.02.2019 in W.M.P.Nos. 5926, 5928, 5929 & 5930 of 2019 in WP.No.1878 of 2019, has been passed once again pertaining to the very same product imported. The relevant portion of which reads as follows:

"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.".

6. The miscellaneous petitions are disposed of in terms of the orders dated 25.02.2019 in W.M.P.Nos. 5926, 5928, 5929 & 5930 of 2019 in WP.No.1878 of 2019, mentioned supra. We 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 shall furnish bank guarantee for 50% of the amount demanded, as safeguard duty for a period of two years, which shall be renewed periodically and also furnish a bond for the balance 50% under each Bills of Entry.

-sd/-

08/05/2019

/ TRUE COPY /

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

TO

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

2 DIRECTOR GENERAL (SAFEGUARD
S),, 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.

C.C. to ARUN KARTHIK MOHAN Advocate Sr.No.6544

C.C. to M/S.RAJESHVIVEKANNANTHAM, Advocate Sr.No.6561

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

The Government Advocate, High Court, Madras - 104.

Order

in

WMP.Nos.14113, 14114, 14117, 14120, 14121 and 14122 of 2019

In W.P.Nos.14043, 14047 and 14050 of 2019

Date :08/05/2019

From 26.2.2001 the Registry is issuing certified
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KP(10/05/2019)