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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25-07-2019

CORAM

THE HONOURABLE MR. JUSTICE M.SUNDAR

W.P.No.21319 of 2019

M/s.Sam Gypsum Private Limited,
Represented by its Director,
Shri Thanzil Ahmed Shoyan,
No.319/A, Women Industrial Park,
Kattur, Thirumullaivoyal,
Chennai-600 062.

..Petitioner

-Vs-

1.The Assistant Commissioner of Customs (Refunds-II),
Custom House,
No.60, Rajaji Salai,
Chennai-600 001.

2.The Deputy Commissioner of Customs (Group 5),
Custom House,
No.60, Rajaji Salai,
Chennai-600 001.

..Respondents

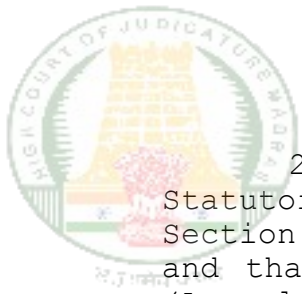
PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records of the impugned communication dated 25.3.2019 of the first respondent in F.No.1005/2018-Refunds and quash the same and further direct first respondent to sanction the refund along with appropriate interest within a reasonable time.

For Petitioner : Mr.G.Vijayabalan

For Respondents : Ms.Hema Muralikrishnan,
Standing Counsel for Customs.

O R D E R

Mr.D.Vijayabalan, learned counsel on record for writ petitioner and Ms.Hema Muralikrishnan, learned Standing Counsel for Customs on behalf of two official respondents are before this Court.



2. Learned counsel for writ petitioner submits that a Statutory Appeal is available against the impugned order under Section 128 of 'The Customs Act, 1962' ('said Act' for brevity) and that such statutory appeal lies to Commissioner of Customs (Appeals). It is also submitted that at the time of filing of instant writ petition, the Office was vacant, but an Officer has since been appointed. Saying so, learned counsel seeks leave of this Court to withdraw this writ petition, but preserving rights and liberties of writ petitioner to file an appeal and pursue the same.

3. Learned counsel for writ petitioner submits that he has instructions to withdraw this writ petition. Saying so, learned counsel has made an endorsement in the case file, which reads as follows:

'I may be permitted to withdraw the writ petition with liberty to file statutory appeal.'

Sd/-
25-07-2019
Counsel for Petitioner'

4. Aforesaid endorsement is reiterated in the hearing.

5. In the light of the endorsement and reiteration of the same in the hearing, this writ petition is dismissed as withdrawn. Time spent in the instant writ petition i.e., period from 15.7.2019 (being the date of filing of instant writ petition) to the date on which copy of this order is made available by Registry of this Court shall stand excluded in computing limitation for the said statutory appeal, obviously preserving the rights of writ petitioner to prefer statutory appeal under Section 128 of the said Act. There shall be no order as to costs.

Svn

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Assistant Commissioner of Customs (Refunds-II),
Custom House,
No.60, Rajaji Salai,
Chennai-600 001.



2.The Deputy Commissioner of Customs (Group 5),
Custom House,
No.60, Rajaji Salai,
Chennai-600 001.

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+1cc to Mrs.Hema Muralikrishnan, Advocate, SR.No.63750

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Kak (14/09/2019)