BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **01.08.2019**

CORAM:

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**

W.P.(MD)No.16958 of 2012
and
M.P.(MD)No.1 of 2012

Menaka Mills Ltd.,
Represented by its Director,
M.Nagarajan, 230 B, Vaigai Dam Road,
Kana Vilakku, Theni - 625 562. ... Petitioner

/Vs./

1.The Assistant Commissioner of Customs,
Revenue Recovery Unit,
Office of the Commissioner of Customs,
Ministry of Finance,
Government of India,
33,Rajaji Salai, Customs House,
Chennai - 600 001.

2.The Superintendent,
Office of the Superintendent of Central Excise,
Theni Range,
No.7, Sasthiri Street,
N.R.T.Nagar,
Theni - 625 531.

3.Pamban Aparel Ltd.,
Represented by its Managing Director,
230, Vaigai Dam Road,
Kanavilakku, Theni - 625 562.

4.The Director General of Foreign Trade,
Udyog Bhavan, New Delhi - 110 011. ... Respondents

PRAYER:- Writ Petition - filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records relating to the communication bearing C.C.No.1323/2012 dated 27.11.2012 read with O.C.No.1341/2012 dated 05.12.2012 issued by the 2nd respondent and quash the same.

For Petitioner : Mr.T.Selvam for Mr.T.Antony Arul Raj
For R-1 & R-2 : Mr.B.Vijaykarthikeyan
For R-3 & R-4 : No appearance

ORDER

The petitioner challenges communications dated 27.11.2012 and 05.12.2012 issued by the Superintendent of Central Excise calling upon the petitioner to recover duty along with interest in terms of orders in original dated 18.01.2011 and 27.11.2012 passed by the assessing officer on Pamban Apparels Limited, 3rd respondent in this writ petition.

2. The petitioner is admittedly only a lessee, having taken on lease the plant, buildings and machinery of the third respondent for its own business purposes on 26.10.2006. At this juncture, I must clarify that the petitioner is incorporated in the year 1994 and there is no averment or allegation by the official respondents, the Assistant Commissioner of Customs, Superintendent of Central Excise or the Director General of Foreign Trade to the effect that the petitioner and the third respondent are related parties or associated in anyway at all except as lessor and lessee.

3. While this is so, the petitioner appears to have received the impugned communications calling upon it to settle the outstanding arrears due and payable by R-3 to the respondents along with interest.

4. Though the petitioner states in affidavit that it had settled the loans availed from the ICICI Bank and other creditors of R3, there is nothing to indicate that it was a successor-in-interest to the business of the third respondent. This is also not the case of the respondents in counter. The basis on which the impugned communications have been issued and the basis on which the counter proceeds is that, being a lessee, the petitioner is bound to settle the outstanding dues of duty along with interest to the Department. This demand has no authority in law.

5. Learned counsel for the respondents relies on the provisions of Section 142 of the Customs Act which deals with recovery of dues to the Government, particularly the proviso therein. I extract below the proviso for sake of clarity:

> *'Provided that where the person (hereinafter referred to as predecessor), by whom any sum payable under this Act including the amount required to be paid to the credit of the Central Government under Section 28B is not paid, transfers or otherwise disposes of his business or trade in whole or in part, or effects any change in the ownership thereof, in consequence of which he is succeeded in such business or trade by any other person, all goods, materials, preparations, plants, machineries, vessels, utensils, implements and articles in the*

custody or possession of the person so succeeding may also be attached and sold by the proper officer, after obtaining written approval from the Commissioner of Customs, for the purposes of recovering the amount so payable by such predecessor at the time of such transfer or otherwise disposal or change.'

6. A perusal of the proviso would make it clear that it is attracted only in those cases where an entity has taken over the business of an erstwhile concern. Such take over may be by way of a transfer, purchase or by change in ownership. However, in the present case, there is nothing to indicate that the petitioner is successor in interest to the business of R-3 and the entire proceedings for recovery and case of the Department rests simply on the relationship *inter se*, of lesser and lessee. Such relationship is insufficient to fasten liability of tax or duty. This Writ Petition is thus allowed. Impugned communications are quashed. No costs. Connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (Crl.side)

// True Copy //

Sub Assistant Registrar

To

1.The Assistant Commissioner of Customs,
Revenue Recovery Unit,
Office of the Commissioner of Customs,
Ministry of Finance, Government of Indoa,
33,Rajaji Salai, Customs House, Chennai - 600 001.

2.The Superintendent,
Office of the Superintendent of Central Excise,
Theni Range, No.7, Sasthiri Street,
N.R.T.Nagar, Theni - 625 531.

3.The Director General of Foreign Trade,
Udyog Bhavan, New Delhi - 110 011.

+1 CC to M/s.B.VIJAY KARTHIKEYAN, Advocate (SR-79426[F] dated 02/08/2019)

Order made in
W.P.(MD)No.16958 of 2012
Dated:01.08.2019

Sm
MS/17.09.2019/3P.5C