



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 09.08.2019
CORAM

WEB COPY

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P. (MD) No.8249 of 2019
and W.M.P (MD) Nos.6474 & 6475 of 2019

M/s.S.M.B.Tube Syndicate,
Door No.124, F-F-9, Mubarak Complex,
Ranga Konar Street, Kattoor,
Coimbatore - 641 001,
Rep. By its Partner Shri Zuzar Ali

... Petitioner

Vs.

1.The Additional Commissioner of Customs,
Custom House, New Harbour Estate,
Tuticorin - 628 004.

2.The Assistant Commissioner of Customs (ARC),
Custom House,
New Harbour Estate,
Tuticorin - 628 004.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the first respondent pertaining to Order-in-Original No.09/2019, in file No.C.No.VIII/10/49/2018-Adjn dated 20.02.2019 and the communication of the second respondent in C.No.VIII/48/145/2019-Arrears dated 15.03.2019 (enclosing copy of the challan No.86648 dated 14.03.2019 in respect of encashment of the Bank Guarantee executed by the petitioner at the time of provisional release of the goods) and quash the same for being contrary to Section 129 E of the Customs Act, 1962 read with Circular No.1053/2/2017-C.X dated 10.03.2017 and consequently direct the second respondent to refund the amount of Rs.20,00,000/- pending disposal of the statutory appeal preferred by the petitioner.

For Petitioner : Mr.B.Sathish Sundar

For Respondents : Mr.R.Aravindan

ORDER

Heard Mr.B.Sathish Sundar, learned counsel for the petitioner and Mr.R.Aravindan, learned counsel for the respondents.

2. An Order-in-Original, dated 07.08.2019, sanctioning refund of Rs.20,00,000/- to the petitioner in compliance of order dated 30.07.2019, is produced before the Court.



3.Mr.R.Aravindan, learned counsel for the respondents circulates a copy of a decision of the Karnataka High Court in *Oracle India Private Limited Vs. Union of India* [2014 (303) E.L.T 366 (Kar.)], in support of his request that the petitioner be directed to furnish bank guarantee afresh during the pendency of the petitioners' appeal before the CESTAT. The aforesaid decision is distinguishable on facts since the direction of the Karnataka High Court to the petitioners' to furnish fresh bank guarantee was in the context of pending demands where no statutory appeal had been filed by the petitioner.

4.This is recorded in paragraph 30, wherein the Bench notes that the petitioner has a statutory right of appeal, which period had not yet expired. Thus the petitioner in that case, had yet to challenge the demand raised.

5.However, in this case, the petitioner has already filed an appeal before the CESTAT on 12.03.2019 and the bank guarantee has, admittedly been invoked on 11.03.2019. Thus, it is for the respondents to seek adequate protection of their interests before the CESTAT only.

6.This Writ Petition is closed as nothing further survives therein. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Additional Commissioner of Customs,
Custom House, New Harbour Estate,
Tuticorin - 628 004.

2.The Assistant Commissioner of Customs (ARC),
Custom House,
New Harbour Estate,
Tuticorin - 628 004.

+1 CC to MR.R.ARAVINDAN, Advocate (SR-81053[F] dated 09/08/2019)

W.P. (MD) No.8249 of 2019
09.08.2019