

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.34543 of 2015
and
W.M.P.No.1 of 2015

Sri.S.P.Subramanian

... Petitioner

Vs.

1.Deputy Commissioner of Customs(EPCG),
Customs House, No.60, Rajaji Salai,
Chennai - 600 001.

2.Assistant Commissioner of Customs,
Revenue Recovery Unit,
Customs House, No.60, Rajaji Salai,
Chennai 600 001.

...Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus, calling for the records on the file of the 2nd Respondent vide recovery proceeding initiated in F.No.RRU 53/2012 EPCG dated 08.10.2015 and to quash the same and further direct the 1st Respondent to pass orders considering the detailed Reply letters filed by the Petitioner and also refund the money recovered with interest to the petitioner.

For Petitioner : Mr.N.V.Balaji

For Respondents : M/s.R.Hemalatha, SSC

O R D E R

The petitioner has challenged the impugned communication dated 8.10.2015 issued by the 2ndrespondent seeking to recover customs duty in terms of Section 142 (1) (c) (ii) of the Customs act, 1962.

2.It is a case of the petitioner that the petitioner was a partner of SP International which had obtained a EPCG license and had imported capital goods at concessional rate of customs duty.

3.It is submitted that the said partnership firm has closed down its business and the firm has been dissolved in 2001.

4.Learned counsel for the petitioner further submits that the said partnership firm had discharged export obligation undertaken but there was a shortfall in the net foreign exchange realization. The said partnership firm had filed cases against the foreign buyer.

5.It is further submitted that since the said firm had closed on the business, Order No Original No. 14233 of 2011 dated 18.1.2011 passed by the Asst Commissioner of Customs (EPCG) and Order in the Original No. 2883 of 2004 dated 24.9.2004 passed by the Deputy Commissioner of Customs had remained unserved and therefore no appeal could be filed.

6.The learned counsel for the petitioner submits that the petitioner also had not received the above two orders.

7.Though, the submission of the learned counsel for the petitioner that the petitioner has not received the said order is not convincing, nevertheless I am inclined to direct the petitioner to file an appeal before the Commissioner of Customs (Appeals) within a period of 30 days from date of receipt of this order subject to pre-deposit of the duty as is contemplated under Section 129 of the CA Act, 1962.

8.If such appeals are filed, the Commissioner of Customs (Appeals) is requested to dispose the appeals on merits within a period of 3 months thereafter.

9.All the issues are left open to the canvassed before the Learned Commissioner of Customs (Appeals) including the availability of the benefit of Notification No. 46 of 2013-Cus dated 26.09.2013.

10. Pending disposal of the said appeal, impugned recovery proceedings shall be kept in the abeyance.

11.Writ petition stands disposed with the above observation.
No cost. Consequently, connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. Deputy Commissioner of Customs (EPCG),
Customs House, No.60, Rajaji Salai,
Chennai - 600 001.

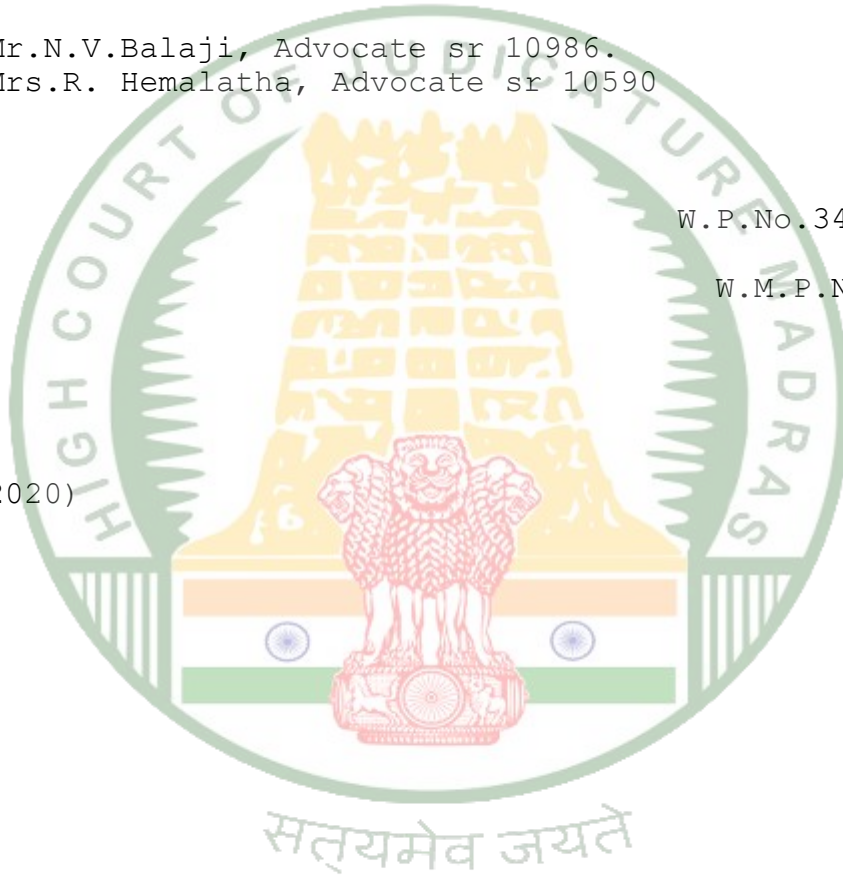
2. Assistant Commissioner of Customs,
Revenue Recovery Unit,
Customs House, No.60, Rajaji Salai,
Chennai 600 001.

+1 CC to Mr.N.V.Balaji, Advocate sr 10986.

+1 CC to Mrs.R. Hemalatha, Advocate sr 10590

W.P.No.34543 of 2015
and
W.M.P.No.1 of 2015

NR (CO)
SP (21/05/2020)



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