

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 20.01.2020
CORAM
THE HONOURABLE DR. JUSTICE ANITA SUMANTH
Writ Petition No.29855 of 2019

M/s.German Express shipping Agency (India) Pvt. Ltd.,
88, Rajaji Salai, Chennai, 600 001.
Represented by its COO Mr.Ravee S.Tittei

...Petitioner

Vs

1. Assistant Commissioner of Customs,
Chennai -IV Commissionerate,
Office of the Commissioner of Customs,
Custom House, No.60,
Rajaji Salai, Chennai - 600 001.
2. M/s.Aspinwall & Co. Ltd.,
Wavoo Mansion, 5th Floor, No.48,
Rajaji Salai, Parrys, Chennai - 600 001.
Represented by its Director.
3. R.Ragavendran
(R3 impleaded as per order dated
20.12.2019 in W.M.P.No.34092/19
in WP.No.29855/19

...Respondents

Prayer: PETITION filed under Article 226 of The Constitution of India praying for the issuance of Writ of Mandamus, directing the 1st Respondent to permit the Petitioner to auction the goods containing 2500 packages of Indian Refined Sugar weighing about 125.00 MTS covered under Shipping Bill No.8578294 dated 30.10.2018 (filed by the 2nd Respondent) lying at the Container Freight Station of the Petitioner and adjust the sale proceeds towards its outstanding storage.

For Petitioner : Mr.P.Giridharan

For Respondents : Ms.Aparna Nandakumar,
Senior Standing Counsel for R1
Mr.K.Krishnaswamy for R2
Mr.B.Dhanaraj for R3

O R D E R

The thrust of the petitioners' argument revolves around the provisions of Section 63 of the Customs Act, 1962, which, however, stand deleted from the Act, with effect from 14.05.2016.

2. Learned Counsel for the petitioner thus fairly states that there is nothing further to be stated in the matter in support of the petitioners' prayer.

3. This Writ Petition is thus dismissed. However, since proceedings are stated to be pending before the National Company Law Tribunal (NCLT) as against the exporter and a moratorium under Section 14 has been granted with a Resolution Professional ('RP') appointed for initiation of Corporate Insolvency Resolution Process ('CIRP'), the petitioner is permitted to approach the RP with a claim for the amount due from the Corporate Debtor. Such claim, if submitted will be considered by the RP strictly in the order of priority, as set out under Section 53 of the Insolvency and Bankruptcy Code, 2016 (IB Code).

4. The undertaking of the RP, represented by Mr.B.Dhanaraj, learned counsel, to the effect that no objection will be raised on the maintainability of the claim of the petitioner, since the petitioner, admittedly, does not figure as a creditor in the books of the corporate debtor, is recorded.

5. Mr.K.Krishnasamy, learned counsel appearing for the CHA (R2) states that the claim of the CHA includes the claim of the petitioner. Care may be taken to ensure that the claim of the Container Freight Station, the petitioner herein, is considered only once.

6. Since commodity in question i.e. Sugar, is perishable, necessary steps be taken by the RP for taking possession of the consignment and expeditious disposal of the same, by way of public auction within a period of four weeks from date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

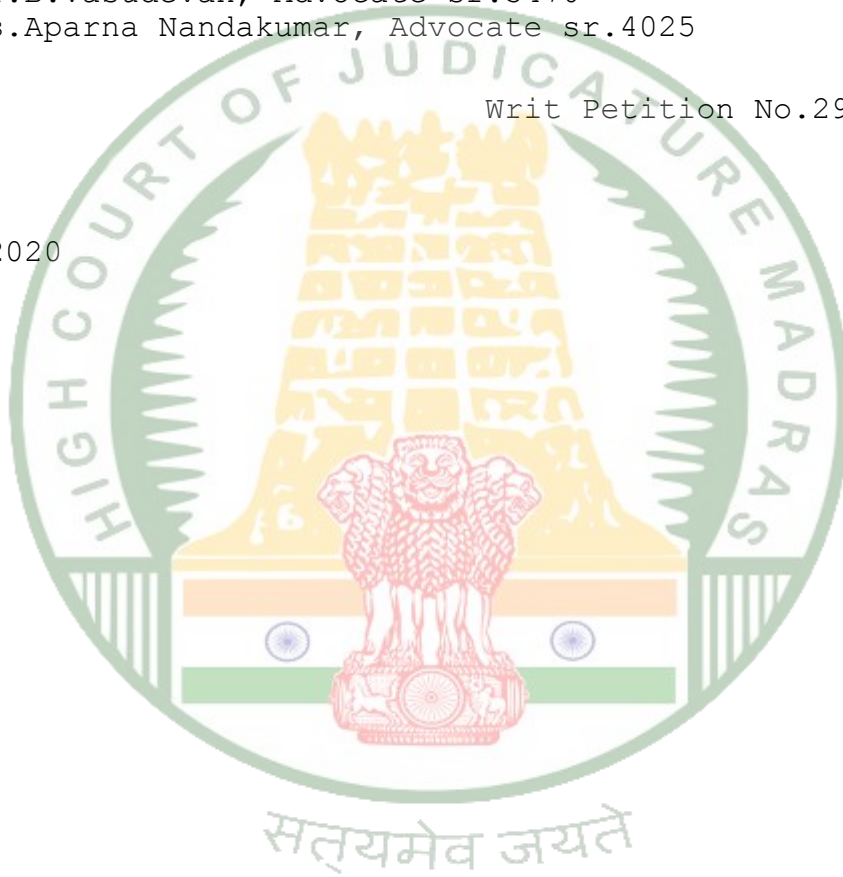
To

1. Assistant Commissioner of Customs,
Chennai -IV Commissionerate,
Office of the Commissioner of Customs,
Custom House, No.60,
Rajaji Salai, Chennai - 600 001.

+1cc to Mr.B.Dhanaraj, Advocate sr.3548
+1cc to Mr.P.Giridharan, Advocate sr.3752
+1cc to Mr.B.Vasudevan, Advocate sr.3470
+1cc to Ms.Aparna Nandakumar, Advocate sr.4025

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ppa (co)
nr 24/01/2020



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