BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)Nos.9286 & 9287 of 2019

and

W.M.P.(MD)Nos.7293 & 7294 of 2019

M/s.Brisky Traders,
Represented by its Proprietor,
Mr.D.Christopher Rathinasingh Jebaraj,
430, V.E.Road,
Tuticorin-628 002. ... Petitioner in both W.Ps.

Vs

1.The Assistant Commissioner of Customs,
Custom House,
New Harbour Road,
Tuticoriin-624 004.

2.The Assistant Commissioner of Customs (ARC)
Custom House,
New Harbour Road,
Tuticorin-624 004.

3.The Branch Head,
Tamilnadu Mercantile Bank,
Tuticorin South Branch,
283, WGC Road,
Tuticorin-628002. ... Respondents in both W.Ps.

Prayer in W.P.(MD)No.9286 of 2019: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the first and second respondents to cause sale of the goods covered by bill of entry 6048526, dated 20.02.2012 in terms of Section 142 (1)(b) of the Customs Act, 1962 and adjust the sale proceeds towards outstanding dues of the petitioner.

Prayer in W.P.(MD)No.9287 of 2019: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the first and second respondents to issue appropriate orders to de-freeze the petitioner's savings bank account No.106100050300466 and overdraft account No.106700050900147 maintained with the third respondent bank.

For Petitioner	:	Mr.G.Derrick Sam for Mr.Hari Radhakrishnan
For R1 & R2	:	Mr.R.Aravindhan
For R3	:	Mr.Pala Ramasamy (in both W.Ps.)

ORDER

Heard the learned counsel for the petitioner, learned standing counsel for the customs department and the learned standing counsel for the Tamilnadu Mercantile Bank.

2.The petitioner had imported Brass Scrap(Melon) from Maldives. The petitioner was under the impression that the said goods are freely importable. The customs department took the stand that without getting clearance from the Tamil Nadu Pollution Control Board, the petitioner could not have imported. Therefore, it was ordered that the goods are liable to be confiscated. However, while passing the order dated 30.11.2012, the Assistant Commissioner of Customs Department, permitted the petitioner to re-export the goods at his own cost. Penalty to the tune of Rs.4,82,160/- was also imposed on the petitioner. The said order was confirmed by the appellate authority also. The order passed by the department thus became final. The petitioner did not re-export the goods. Instead, he has paid only a sum of Rs.1,00,000 /- towards penalty. Therefore, the authority was left with no other option but to attach the petitioner's bank account with the Tamil Nadu Mercantile Bank. The petitioner requested that the authority can as well sell the goods in question and recover the proceeds. The Authority did not act on the said request . That necessitated filing of these two writ petitions.

3.The prayer in W.P.(MD)No.9286 of 2019 is for causing the sale of the goods. The prayer in W.P.(MD)No.9287 of 2019 is for raising the attachment of the bank account.

4.The respondents have filed the counter affidavit opposing the petitioner's request.

5.The stand of the department was that the goods could not have been imported at all. When that is the stand of the department, the department cannot be compelled to sell the goods. The learned standing counsel also added that when it has been directed that the goods are liable for confiscation, the petitioner cannot call upon the department to cause sale of the goods and adjust the sale proceeds against the penalty.

6.I carefully considered the rival contentions. As rightly pointed out by the learned counsel appearing for the petitioner, even while holding that the goods are liable for confiscation for the very same breath, the assessing authority had held that the goods can be re-exported. Therefore, no final order of confiscation has been passed so far. It is not as if the import of the goods is totally prohibited. They would only come under the restricted category. Therefore, the goods can be sold to someone who is authorised to take the goods.

7.The learned counsel for the petitioner draws my attention to Section 142 of Customs Act, 1962 which deals with recovery of sums due to Government. Section 142 (1)(b) of Customs Act, 1962, reads as follows:-

> "142.***Recovery of sums due to Government***:- (1)(b) the Assistant Commissioner of Customs or Deputy Commissioner of Customs may recover or may requisite any other officer of customs to recover the amount so payable by detaining and selling any goods belonging to such person which are under the control of the Assistant Commissioner of Customs or Deputy Commissioner of Customs or such other Officer of customs;"

8.Therefore, by selling the goods in question to someone who is authorised to take the same, the Government will definitely be getting some revenue. I do not understand as to why, such a course of action is not being adopted.

9.In this view of the matter, the respondents 1 and 2 are directed to sell the petition mentioned goods and appropriate the sale proceeds against the petitioner's liability. If the goods in question fetch more amount than the petitioner's liability, then after due adjustment, the balance amount will have to be paid to the petitioner and the attachment of the bank account will be raised. If the sales proceeds are not sufficient to liquidate the petitioner's liability, then the question of raising attachment does not arise at all. When the petitioner's liability is cleared, the attachment in question can be raised. W.P.(MD)No.9286 of 2019 is allowed. In view of the order passed in W.P.(MD)No.9286 of 2019, W.P.(MD)No.9287 of 2019 is disposed of accordingly. The entire exercise of sale shall be completed within a period of four months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CSIII)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note :In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

TO

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Tuticoriin-624 004.

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SSS(CO)
KB(12.03.2021) 4P 3C