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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.5992 of 2020

M/s.V.K.Industrial Corporation Limited
Rep. by its Director, Ms.Kairavi Mehta,
1123 Hubtown Solaris, Prof.N.S. Phadke Marg,
Andheri East, Mumbai 400 069 ...Petitioner

-Vs-

1. The Commissioner of Customs,
Chennai II Commissionerate,
Custom House, 60 Rajaji Salai,
Chennai 600 001.
2. The Assistant Commissioner of Customs (Group 4)
Custom House, 60 Rajaji Salai,
Chennai 600 001. ...Respondents

Writ Petitions under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, direct the respondents to release bank guarantee Nos. 0393BGFD004617 dated 19.11.2016 for Rs.25,00,000/- and 393BGFD00417 dated 03.05.2016 for Rs.2,20,55,468/- executed by the petitioner within a reasonable time frame.

For Petitioner : Mr.G.Derrick Sam

For Respondents: Mr.A.P.Srinivas
Senior Standing Counsel

O R D E R

The prayer sought for herein is for a writ of Mandamus, to direct the respondents to release bank guarantee Nos. 0393BGFD004617 dated 19.11.2016 for Rs.25,00,000/- and 393BGFD00417 dated 03.05.2016 for Rs.2,20,55,468/- executed by the petitioner within a reasonable time frame.

2.That the petitioners goods imported was detained initially by the respondent/Customs and in order to release the



goods by way of provisional release, the petitioner approached this Court and after obtaining orders from this Court, by giving Bank Guarantee, the goods were released provisionally.

3. Thereafter, adjudication proceedings went on and ultimately it was decided in favour of the petitioner, where the respondent/Customs decided to drop the adjudication proceedings against the petitioner.

4. Though such an order was passed by the Adjudicating Authority, as against which, appeal has been filed by the respondents, where admittedly, there has been no stay granted by the Appellate authority. However, the appeal is still pending.

5. Citing the said reason that the appeal is pending, the bank guarantee executed by the petitioner at the time of provisional release of the goods has not been released so far to the petitioner despite the request in this regard having been made by the petitioner. Therefore the petitioner has approached this Court by filing the present writ petition.

6. When the case was came up for hearing on 08.02.2022, this Court has passed the following order:

"At the time of provisional release of the goods in question, the petitioner has given a bank guarantee, subsequent adjudication proceedings went on and it was concluded in favour of the petitioner thereby the adjudication proceedings initiated against the petitioner was dropped.

2. Though as against the said order passed by the Adjudicating Authority, appeal was filed by the Revenue, where, there has been no stay granted against the order of the Adjudicating Authority. Therefore, during the pendency of the appeal, the petitioner sought for releasing of the bank guarantee given by the petitioner at the time of provisional release of goods, which has been kept pending, awaiting the decision to be made by the Appellate Authority and therefore, the petitioner has approached this Court.

3. If there is no stay in the appeal against the order passed by the Adjudicating Authority as of now, the order of the Adjudicating Authority dropping the proceedings initiated against the petitioner is prevailing. Therefore prima facie this Court feel that, there can be



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no impediment for the respondent to release the bank guarantee given by the petitioner at the time of provisional release of goods.

4. However Mr.A.P.Srinivas, learned Senior Standing Counsel appearing for the respondents seeks one week time to get written instructions on this limited issue and to get along with a case.

5. Post the matter on 15.02.2022."

7. Pursuant to which, the writ petition again has come up for hearing today, where Mr.A.P.Srinivas, learned Senior Standing Counsel submitted that, though communication has been sent, he has not so far received the written instruction from the respondents as to why the bank guarantee shall not be released in favour of the petitioner in view of the order passed by the Adjudicating Authority dropping the Adjudication proceedings.

8. Therefore, the learned Standing Counsel seeks some more time to get instructions in this regard.

9. I have considered the said stand taken by the respondents and also have gone through the merits of the case, as projected by the petitioner.

10. Admittedly, the adjudication proceedings concluded in favour of the petitioner, where it was dropped, as against which, even though appeal was filed, admittedly there was no stay granted by the Appellate Authority, thereby, the order passed by the Adjudicating Authority dropping the adjudication proceedings still holds good. When that being the position, this Court feels that there can be no further impediment for the respondents as of now to release the bank guarantee already given by the petitioner at the time of provisional release of the goods.

11. If ultimately, the appeal is decided in favour of the revenue and against the petitioner, the revenue can recover the money whatever, by way of custom duty as well as penalty or otherwise. Therefore expecting the order to be passed in the appeal, which is admittedly pending, where there has been no stay granted, the respondent customs cannot keep the bank guarantee without releasing the same, despite the request made in this regard by the petitioner.

12. In that view of the matter, this Court feels that, the prayer sought for in this writ petition can be considered and



granted. Accordingly, this writ petition is allowed and a direction is given to the respondents to release the bank guarantee Nos. 0393BGFD004617 dated 19.11.2016 for Rs.25,00,000/- and 393BGFD00417 dated 03.05.2016 for Rs.2,20,55,468/- executed by the petitioner within a period of two weeks from the date of receipt of a copy of this order.

13. It is made clear that by virtue of this order, if the bank guarantee is released now, that would not be taken as an advantage before the Appellate Authority on the merits of the appeal filed by the revenue, where it is open to the Appellate Authority to decide the same on merits and in accordance with law.

14. With this directions, this writ petition is allowed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

mp/nti

To:

1. The Commissioner of Customs,
Chennai II Commissionerate,
Custom House, 60 Rajaji Salai,
Chennai 600 001.
2. The Assistant Commissioner of Customs (Group 4)
Custom House,
60 Rajaji Salai,
Chennai 600 001.

+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.9986

W.P.No.5992 of 2020

SR(CO)
RGA(16/03/2022)