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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.NO.20882 OF 2021

M/s.Novel Impex
Shop No.55, Amoluck Complex
II Floor, No.3, Periya Naicken Street
Sowcarpet, Chennai - 600 003
By its Proprietor Mr.Narendra Kumar Vora

... Petitioner

Vs.

1. The Commissioner of Customs (Gr.3)
Chennai II Commissionerate
No.60, Rajaji Salai, Customs House
Chennai - 600 001.
2. The Additional Commissioner of Customs (Gr.3)
Chennai II Commissionerate
No.60, Rajaji Salai, Customs House
Chennai - 600 001.
3. The Deputy Commissioner of Customs (Gr.3)
Chennai II Commissionerate
No.60, Rajaji Salai, Customs House
Chennai - 600 001.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondents herein to cancel and return back the Bank Guarantee bearing BG No.01890100000249 dated 17.10.2018 for an amount of Rs.7,49,088/- issued by Axis Bank, Purasawalkam, Branch, Chennai - BG, which was executed towards the clearance of goods, covered under Bill of Entry Nos.3510385 and 3510423 both dated 06.10.2017 and also by considering the representation dated 02.09.2021 given by the petitioner to the respondents herein.



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For Petitioner : Mr.S.Baskaran
For Respondents : Mr.M.Santhanaraman
Senior Panel Counsel

ORDER

The prayer sought for herein is for a Writ of Mandamus, directing the respondents to cancel and return back the Bank Guarantee bearing BG No.01890100000249 dated 17.10.2018 for an amount of Rs.7,49,088/- issued by Axis Bank, Purasawalkam, Branch, Chennai - BG, which was executed towards the clearance of goods, covered under Bill of Entry Nos.3510385 and 3510423 both dated 06.10.2017 and also by considering the representation of the petitioner dated 02.09.2021.

2. It is a case of the petitioner that, against the petitioner, an adjudication order was passed by the respondent in Order-in-Original dated 25.09.2019. The said order was under challenge in the writ petition filed by the petitioner in W.P.No.34811 of 2019.

3. The said writ petition along with some other writ petitions came to be decided by a learned Judge of this Court by a common order dated 25.10.2021 made in W.P.Nos.19919 of 2021 & etc., where the learned Judge has passed the following orders:

"2. Pursuant to the earlier proceedings, more particularly paragraph 7 thereat, several writ petitions were grouped together and listed under the cause list caption 'GROUPING MATTERS (CUSTOMS ACT)'.

3. Some of the writ petitions listed under the aforesaid caption have been re-notified. The captioned matters are other than those that have been re-notified. This common order will govern the captioned writ petitions.

4. By consent of counsel for respective writ petitioners and learned Solicitor i.e., Additional Solicitor General of India, instructed by the Revenue counsel, all the captioned writ petitions are disposed of by saying that in the light of paragraphs 5 & 6 of the previous proceedings dated 04.10.2021, all the show cause notices, consequential orders, if any (wherever applicable) are set aside, albeit preserving the rights of the Department/State to resuscitate/revive the SCNs and the consequential orders, if any (wherever applicable) subject to the orders of Hon'ble Supreme Court in the review applications.



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5. Ratio laid down by Hon'ble Supreme Court in Canon India is the law declared by Hon'ble Supreme Court as of today and therefore as a matter of judicial discipline, this Court is bound to follow the same as contended by learned counsel for respective parties.

6. Captioned writ petitions are disposed of in the aforesaid manner. There shall be no order as to costs. Consequently, connected WMPs are also disposed of closed. Though obvious, it is made clear that this Court has not expressed any view or opinion on the merits of the matter as Hon'ble Supreme Court is in seizen of the review petitions and the fate of the impugned SCNs and consequential orders, if any (wherever applicable) being resuscitated, if that be so will depend on the outcome of the review petitions in the Supreme Court."

4. Thus, the Order-in-Original i.e., adjudication order has been set aside, of-course, following the law declared by the Hon'ble Supreme Court of India in the case of M/s.Canon India Private Limited Vs. Commissioner of Customs, reported in 2021 (3) TMI 384.

5. Since the very adjudication proceedings itself is set aside on the ground that, the proceedings initiated by way of Show Cause Notice, which culminated in the adjudication order is by DRI official and not by customs authorities, hence, the said DRI is not the proper officer within the meaning of Section 28 of the Customs Act and on that ground, since the law having been declared by the Hon'ble Supreme Court of India in Canon India case (cited supra), following the same, the learned Judge allowed the writ petition along with similar writ petitions in the order cited supra.

6. Therefore, the learned counsel appearing for the petitioner has submitted that, when the very adjudication order itself is no more available in the eye of law, during the pendency of the adjudication proceedings the Bank Guarantee issued by the petitioner cannot be retained by the respondents. Therefore, in order to get back the said Bank Guarantee, the present writ petition has been filed, seeking for a mandamus, of-course after making an attempt by filing a representation dated 02.09.2021 in this regard. Therefore, the learned counsel for the petitioner seeks indulgence of this Court to issue a direction as prayed for.

7. However, Mr.M.Santhanaraman, learned Senior Panel Counsel appearing for the respondents has submitted that, the learned



Judge, by order dated 25.10.2021, allowing the writ petition filed by the petitioner and other similar writ petitions, has made it clear that, the Court has not expressed any view or opinion on the merits of the matter as the Hon'ble Supreme Court of India in its seizen of the review petitions and the fate of the impugned show cause notices and consequential orders, if any being resuscitated, if that be so will depend on the outcome of the review petitions in the Hon'ble Supreme Court.

8. The learned Senior Panel Counsel appearing for the respondents has brought to the notice of this Court that, in a connected Special Leave Petition in S.L.P.(Civil)No.1513 of 2022 dated 11.02.2022 in the matter of Union of India and another vs. Godrej and Boyce Manufacturing Co., Ltd., after taking into account of the arguments made by the learned Attorney General of India on behalf of Union of India, has tagged the said Special Leave Petition along with connected cases including the review application filed against M/s.Canon India Private Limited for hearing on 08.03.2022. Therefore, once those cases are taken up by the Hon'ble Supreme Court and decided in one way or other, depending upon the outcome of the decision to be made, then only the final fate of the adjudication proceedings, which were subject matter in various writ petitions, though had been set aside and quashed would be decided. Till such time, according to the learned Senior Panel Counsel for the respondents, no finality could be reached. Therefore, at this juncture, the petitioner is not entitled to get back the Bank Guarantee executed by him.

9. I have considered the said submissions made by the learned counsel appearing for both parties and have perused the materials placed before this Court.

10. For whatever reason, the adjudication proceedings issued against the petitioner dated 25.09.2019 has been quashed or set aside by the orders of this Court dated 25.10.2021 as referred to above.

11. Subsequently, if there is any review of the law declared by the Hon'ble Supreme Court in Canon India case (cited supra), it goes without saying that, depending upon the outcome of the decision, what shall be the further consequential action, can be decided and that may be indicated by the Hon'ble Supreme Court.

12. However, as on date, since there has been no adjudication proceedings pending against the petitioner and that has been set aside in the eye of law, the respondents cannot hold the Bank Guarantee given by the petitioner without any authority. Therefore, this Court feels that the prayer sought



for in this writ petition can be considered and granted.

13. In view of the above, the following orders are passed in this writ petition:

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(i) That there shall be a direction to the respondents to return back the Bank Guarantee bearing BG No.01890100000249 dated 17.10.2018 for an amount of Rs.7,49,088/- issued by Axis Bank, Purasawalkam, Branch, Chennai - BG, which was executed towards the clearance of goods, covered under Bill of Entry Nos.3510385 and 3510423 both dated 06.10.2017 within a period of two weeks from the date of receipt of a copy of this order.

14. With this direction, the writ petition stands ordered accordingly. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner of Customs (Gr.3)
Chennai II Commissionerate
No.60, Rajaji Salai, Customs House
Chennai - 600 001.
2. The Additional Commissioner of Customs (Gr.3)
Chennai II Commissionerate
No.60, Rajaji Salai, Customs House, Chennai - 600 001.
3. The Deputy Commissioner of Customs (Gr.3)
Chennai II Commissionerate
No.60, Rajaji Salai, Customs House
Chennai - 600 001.

+1cc to Mr.M.Santhanaraman, Advocate, S.R.No.13671

+1cc to Mr.S.Baskaran, Advocate, S.R.No.13207

W.P.No.20882 of 2021

SRA(CO)

RLP(21/03/2022)