



W.P.No.2912 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11.04.2023

C O R A M

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P.No.2912 of 2018

and W.M.P.No.9917 of 2019

M/s.Srinidhi Fabrics Pvt. Ltd.,
No.28, Thirunagar Colony,
Erode-638 003
represented by its director,
Mr.Sockalingam Sivasubramaniam

... Petitioner

Vs

1.The Chief Manager,
Canara Bank, Cutchery Road Branch,
Cutchery Road, V.H Road,
Erode-638 001

2.The Commissioner of Customs,
Tuticorin.

(R2 impleaded vide order dated 04.03.2019,
made in W.P.No.2912 of 2018 by KRCBJ)

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue Writ of Mandamus or any other Writ or Order or Direction in the nature of Writ, directing the respondent Bank to return the amount of Rs.80,00,000/- (Rupees Eighty Lakhs Only) held as a fixed deposit dated 16.10.2017 in FD.No.274069 by the respondent Bank to the petitioner.

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For Petitioner ... Mr.Anirudh Krishnan

For Respondents ... Mr.Renuka Shankar
for R1

Mr.N.Sundareswaran
Senior Standing Counsel

ORDER

This Writ Petition has been filed for a direction to the respondent Bank to return the amount of Rs.80,00,000/- (Rupees Eighty Lakhs Only) held as a fixed deposit dated 16.10.2017 in FD.No.274069 by the respondent Bank to the petitioner.

2. The petition in W.M.P.No.2912 of 2018 has been filed to implead the Commissioner of Customs, Turicorin as a party to the Writ Petition in W.P.No.2912 of 2018. Since, the Commissioner of Customs, Turicorin has already been impleaded as the 2nd respondent vide order dated 04.03.2019, no further order is necessary in this petition.

3. It is the case of the petitioner that the petitioner imported Benninger open width pad-dry-continuous range with the microprocessor with accessories



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on 12.06.2016 through Turicorin Port claiming exemption from counter veiling duty (CVD) of 81,77,526/-. However the directorate of Revenue Intelligence rejected the claim of exemption on the ground that the fabric dyeing machine imported by the petitioner was not eligible for CVD exemption. The goods were provisionally cleared upon execution of bond for the full value of the goods with a bank guarantee of Rs.80,00,000/-. Thereafter, show cause notice dated 05.01.2007 has been issued to the petitioner proposing to demand differential duty to the confiscation of the imported machinery and levy of penalty. After analysing the written submissions filed by the petitioner, the 2nd respondent has passed an order dated 15.06.2007 denying the benefit of exemption and confirming the demand of duty with interest and penalty. Aggrieved by the same, the petitioner has filed an appeal before the Central Excise and Service Tax Appellate Tribunal (CESTAT). The CESTAT vide order dated 05.09.2007 directed the petitioner to deposit an amount of Rs.10 lakhs within a period of six weeks and waived the pre-deposit and stay of recovery in respect of penalty and balance of CVD as well as the stay of enforcement of bank guarantee till the final disposal of the appeal. Thereafter, the CESTAT have passed the final order dated 05.01.2017 remaining the appeal to the concerned adjudicating authority to pass appropriate order on the basis of the outcome of the decision



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in the case of the Mangali Impex by the Hon'ble Supreme Court. Aggrieved by the same, the Department has filed a Civil Miscellaneous appeals before this Court which is pending till date.

4. It is the further case of the petitioner that he has opened the fixed deposit account in the 1st respondent bank depositing a sum of Rs.80,00,000/- for the purpose of securing the bank guarantee. The 2nd respondent passed an order dated 18.07.2007 invoking the bank guarantee. Aggrieved by the same, the petitioner has filed a Writ Petition in W.P.No.25238/2007 restraining the 2nd respondent from encashing the bank guarantee. This Court vide interim order dated 26.07.2007 granted the order of injunction as against the invocation of the bank guarantee till final orders are passed. The said Writ Petition is still pending. However, it is the case of the petitioner that the bank guarantee has not been renewed or extended by the respondent bank post 18.09.2008. Therefore, there is no valid bank guarantee as on dated. Hence, the petitioner seeks refund of the fixed deposit amount from the 1st respondent.

5. Learned counsel for the petitioner submits that since the 2nd respondent did not exercise the option of keeping the bank guarantee alive



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cannot claim the same now. It is an admitted fact that the fixed deposit was an encumbrance free and hence the bank may be directed to release the amount forthwith.

6. This court heard the learned counsel appearing on either side and perused the materials available on record.

7. Admittedly, the petitioner has imported a fabric dyeing machine upon execution of bank guarantee for a sum of Rs.80,00,000/-. It is also an admitted position that the bank guarantee is not alive as on date. The Tribunal has remanded the matter before the adjudicating authority on the ground of pendency of the matter involving similar issue before the Hon'ble Supreme Court . The issue involved is whether the DRI Officers are proper Officers to issue show cause notice. Since, the issue is said to be pending before the Apex Court, this Court is not inclined to entertain this Writ Petition. However, liberty is granted to the petitioner to approach the 1st respondent seeking release of the fixed deposit based on the outcome of the decision of the Apex Court cited *supra*.



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M.DHANDAPANI, J

NHS

8. In the light of the above, this Writ Petition stands dismissed with the above liberty. There shall be no order as to costs. Consequently, the W.M.P.No.9917 of 2019 is closed.

11.04.2023

Index:Yes/No

Internet:Yes

NHS

To

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