IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.Nos.34053 & 32407 of 2022 &
W.M.P.No.6 of 2023

M/s.Elegant Trading Company,
No.268, Mezzanine Floor,
Valluvar Kottam High Road,
Nungambakkam, Chennai- 600 034.
Rep by its Authorized Signatory Mr.Brahmananda Jena
... Petitioner in both W.Ps.

vs.

1 The Deputy Commissioner of Customs,
O/o.The Principal Commissioner of Customs,
Chennai VII Commissionerate, Air Cargo Complex,
Meenambakkam, Chennai- 600 027.

2 The Branch Manager
ICICI Bank,
Old No.21, New No.36, Vaidyanathan Street,
Off. Thanikachalam Road,
T.Nagar Chennai 600 017.
...Respondents in W.P.No.34053 of 2022

1 The Commissioner of Customs (ACIU),
Chennai VII Commissionerate,
Custom House, Meenambakkam,
Chennai- 600 027.

2 The Commissioner of Customs (Exports),
Chennai VII Commissionerate,
Custom House, Meenambakkam,
Chennai - 600 027.

3 The Addl.Commissoner of Customs(Exports)
Chennai VII Commissionerate,
Custom House, Meenambakkam,
Chennai - 600 027.

4 The Addl. Commssioner of Customs(ACIU),
Chennai VII Commissionerate,
Custom House, Meenambakkam,
Chennai - 600 027.

5 The Assistant Commissoiner of Customs(ACIU),
Chennai VII Commissionerate,
Custom House, Meenambakkam,
Chennai - 600 027.

...Respondents in W.P.No.32407 of 2022

Prayer in W.P.No.34053 of 2022: Writ petition filed under Article 226 of the Constitution of India for writ of Certiorarified Mandamus calling for the records pertaining to the impugned communication dated 28.11.2022 in F.No. CUS/SIIB/INT/604/2022-SIIB, issued by the 1st Respondent herein to the 2nd Respondent Bank, to freeze the current Account No.168705002778 of the petitioner, maintained with the 2nd Respondent Bank, based on which, the 2nd respondent band had freezed the above said current Account of the petitioner and to quash the same, in so far as the said impugned communication had been passed without jurisdiction and without authority of law and in clear violation to the principles of natural justice and also in violative of Art.19 (1) (g) and 301 of the Constitution of India and consequently allow the petitioner to operate their Current Account No.168705002778, maintained with the 2nd Respondent Bank.

Prayer in W.P.No.32407 of 2022: Writ petition filed under Article 226 of the Constitution of India for writ of Mandamus directing the respondents herein to allow the release of goods, albeit provisionally for export, covered under Shipping Bill No.5171220 dated 01.11.2022, which is a "Live" consignment, in terms of CBEC Circular No.1/2011-Customs dated 04.01.2011 which was reiterated in Circular No.30/2013-Customs dated 05.08.2013 and also by considering the representation of the petitioner dated 17.11.2022.

For petitioner
in both W.Ps. : Mr.S.Baskaran

For respondent 1 in
W.P.No.34053 of 2022 &
for respondents in
W.P.No.32407 of 2022 : Mr.M.Santhanaraman,
Senior Standing Counsel

COMMON ORDER

W.P.No.34053 of 2022 has been filed challenging the communication dated 28.11.2022 issued by the first respondent to the second respondent directing to freeze the petitioner's bank account maintained with them, based on which, the second respondent has freezed the petitioner's bank account and also for a direction to the second respondent to de-freeze the petitioner's bank account. W.P.No.32407 of 2022 has been filed seeking for a direction to the respondents to release the goods shipped by the petitioner meant for export to a foreign buyer.

2. Heard Mr.S.Baskaran, learned counsel for the petitioner in both W.Ps. and Mr.M.Santhanaraman, learned Senior Standing Counsel appearing for the respondent 1 in W.P.No.34053 of 2022 as well as for the respondents in W.P.No.32407 of 2022.

3. The petitioner is aggrieved by non-release of the export shipment made by the petitioner and freezing of its bank account in these writ petitions. Admittedly, the petitioner's goods which are meant for export have been seized under section 110 of the Customs Act, 1962. The petitioner's grievance is that they have not been put on notice by the respondents till today as to the reasons for seizure of the export consignment under section 110 of the Customs Act, 1962.

4. The petitioner claims that they have been cooperating with the respondents subsequent to the seizure under section 110 of the Customs Act, 1962 by giving statements periodically in support of their contentions that the subject export is a valid export. The petitioner also claims that the subject export consignment pertains to export of Watches to Hangkong. The petitioner has given representations on 17.11.2022 and 23.11.2022 to the second respondent in W.P.No.32407 of 2022 requesting them to release the goods for export. However, according to the petitioner, till date, the said representations have not been considered by the respondents.

5. It is also contended by the petitioner that subsequent to the seizure of the export goods under the provisions of section 110 of the Customs Act, 1962, a communication has been sent by the first respondent to the second respondent in W.P.No.34053 viz., ICICI Bank, the banker of the petitioner, on 28.11.2022 requesting the bank to freeze the bank account of the petitioner. The petitioner also contends that a copy of the said communication was also not marked to them. According to the petitioner, arbitrarily and illegally, without assigning any reason, the respondents have

frozen the bank account of the petitioner which has resulted in great hardship to them in running their business.

6. According to the petitioner, as per the provisions of section 110A of the Customs Act, 1962, the bank account provisionally attached can be allowed to be operated on receipt of a bond in the proper form with such security and conditions as the adjudicating authority may require.

7. The other grievance of the petitioner is that his representation requesting for de-freezing of his bank account as per the provisions of the section 110A of the Customs Act, 1962 has also not been considered by the respondents till date.

8. The petitioner claims that they have received the entire sale proceeds from the foreign buyer for the subject export consignment and therefore, having received the same, they are answerable to the foreign buyer and in case of any further delay, they contend that they will be put to irreparable loss and they have to face a huge claim from the foreign buyer for breach of contract.

9. The petitioner also contends that he is not claiming any benefit from the Government for the shipping bill presented by them with the respondent.

10. The respondents have not filed their counter. Without filing a counter by the respondents, no positive direction can be granted by this Court with regard to the main relief sought for by the petitioner in these writ petitions.

11. Learned counsel for the petitioner on instructions would now submit that the petitioner will be satisfied, if the representation of the petitioner seeking for release of the export consignment which is the subject matter of W.P.No.32407 of 2022 as well as requesting for de-freezing the petitioner's bank account which is the subject matter of W.P.No.34053 of 2022 is considered on merits and in accordance with law within a short time. He contends that the petitioner is already suffering loss and hardship, due to the alleged indifferent attitude of the respondents.

12. No prejudice would be caused to the respondents, if the petitioner's representations seeking for release of the subject export consignment as well as for de-freezing the petitioner's bank account is considered on merits and in accordance with law, within a time frame to be fixed by this Court.

13. This Court is not expressing any opinion on the merits of the petitioner's representations as it is contended by the learned Standing Counsel appearing for the respondents that Air Customs Investigating Unit is investigating the subject export consignment of the petitioner as well as the previous exports made by the petitioner.

14. Since the petitioner has not given separate representation for de-freezing of its bank account by the respondents, this Court is of the considered view that the petitioner will have to send a fresh comprehensive representation to the respondents requesting them to release the subject export consignment of the petitioner as well as for de-freezing of the petitioner's bank account.

15. For the foregoing reasons, this Court directs the petitioner to give a fresh comprehensive representation to the Commissioner of Customs (Exports), Chennai VII Commissionerate, Custom House, Meenambakkam,

Chennai - 600 027 as well as to the Deputy Commissioner of Customs,Office of the Principal Commissioner of Customs, Chennai VII Commissionerate, Air Cargo Complex, Meenambakkam, Chennai- 600 027 seeking for release of the export consignment which is the subject matter of W.P.No.32407 of 2022 in favour of the petitioner and also for de-freezing of the petitioner's bank account within a period of one week from the date of receipt of a copy of this Order. On receipt of the said representation, the aforesaid authorities shall pass final orders on merits and in accordance with law by taking into consideration section 110 A of the Customs Act, 1962 within a period of four weeks thereafter.

16. With the aforesaid direction, these writ petitions are disposed of. No costs. Consequently, connected miscellaneous petition is closed.

19.01.2023

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Note: Issue order copy **on 20.01.2023.**

Index:Yes/No
Speaking/Non-speaking orders
Neutral Citation : Yes / No

To

1 The Deputy Commissioner of Customs,
O/o.The Principal Commissioner of Customs,
Chennai VII Commissionerate, Air Cargo Complex,
Meenambakkam, Chennai- 600 027.

2 The Commissioner of Customs (ACIU),
Chennai VII Commissionerate,
Custom House, Meenambakkam,
Chennai- 600 027.

3 The Commissioner of Customs (Exports),
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ABDUL QUDDHOSE, J.
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