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W.P.No.11305 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.11305 of 2021

M/s.Marine Traders,
No.83, Zakaria Masjid Street,
1st Floor, Room No.30,
Mumbai – 400 009.
(Represented by Prop.Mohamed Shafi)

... Petitioner

Vs.

- 1.The Commissioner of Customs,
Chennai II, Customs House,
60, Rajaji Salai, Chennai – 600 001.
- 2.The Deputy Commissioner (Group-5A),
O/o Commissioner of Customs,
Chennai II Customs House,
60, Rajaji Salai,
Chennai – 600 001.
- 3.The Chief Manager,
Vijaya Bank (Now Bank of Baroda),
Mandvi Mumbai Branch,
Avsar Bldg. 77/81 Kazi Sayed Street,
Mandvi, Mumbai – 400 003.



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4. The Controlling Officer,
Vijaya Bank,
(New Bank of Baroda),
Regional Office,
Vikas Centre, S.V.Road,
Santacruz (West),
Mumbai – 400 054.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution for issuance of a Writ of Mandamus to direct the respondents to release the Bank Guarantee No.50121 BG IS 120003 dated 31.07.2012 for Rs.5,74,000/- with interest accrued thereon, issued by Vijaya Bank, Mandvi Mumbai (Now known as Bank of Baroda).

For Petitioner : Mr.P.Ayyamperumal

For Respondent : M/s.S.Ranjith Kumar
for R3
No Appearance
for R1 and R2

ORDER

The petitioner is before this Court with a mandamus to direct the respondents to release the Bank Guarantee No.50121 BG IS 120003 dated 31.07.2012 furnished by the petitioner for a sum of Rs.5,74,000/-. The Bank Guarantee was furnished by the petitioner at the time of import of goods



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covered by Bill of Entry No.6084972 dated 24.02.2012. The petitioner had imported Electronic Goods – Rechargeable Battery R8640CS for a value of Rs.21,000/- from Chennai Customs House and filed the above Bill of Entry. The imported consignments was provisionally assessed subject to the petitioner executing a P.D. bonds for the value of Rs.29,67,081/- along with Bank Guarantee No.50121 GG IS 12003 dated 31.07.2012.

2. It is the case of the petitioner that the Bank Guarantee was valid only for one year between 31.07.2012 to 31.07.2013 and thereafter nothing was heard. The trigger for the present writ petition appears to be a communication dated 02.03.2021 from the office of the second respondent/Deputy Commissioner fixing the personal hearing in respect of the above Bill of Entry filed by the petitioner on 24.02.2012.

3. The learned counsel for the petitioner submits that the assessment should have been completed within a period of five months in terms of Rule 5 of the Customs (Finalization of Provisional Assessment) Regulations, 2018 as notified by Notification No.73-2018-Customs (N.T.) dated 14.08.2018. It is submitted that since the assessment was not completed in accordance with



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the aforesaid Rules, the question of finalizing the Bill of Entry long after the period prescribed under Rule 5 of the aforesaid Regulation cannot be countenanced.

4. That apart, the learned counsel for the petitioner has also placed reliance on the decision of the Tribunal rendered in ***Commissioner of Central Excise, Chennai Vs. Hindustan Motors Limited*** reported in 2010 (262) E.L.T 350 (Tri-Chennai).

5. I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the third respondent.

6. The relief sought for by the petitioner based on the aforesaid Regulation cannot be granted to the petitioner, as the said Regulation has been issued in the year 2018, whereas, the imports made by the petitioner is of the year 2012. The assessment which has remained provisionally has to be completed and cannot be kept pending.



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7. Under these circumstances, the question of directing the respondents to release the Bank Guarantee furnished by the petitioner for a sum of Rs.5,74,000/- at this stage is pre-mature. The petitioner is directed to participate in the proceedings before the second respondent in terms of the personal hearing notice dated 02.03.2021.

8. Under these circumstances, this Court directs the second respondent to fix the personal hearing and to proceed further and pass appropriate orders on merits and in accordance with law. All the issues are left open to be decided by the respondents.

9. This writ petition stands disposed of. No costs.

08.08.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No
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C.SARAVANAN, J.

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