(2014) 11 MAD CK 0233

In the Madras High Court

Case No : Writ Petition No. 20659 of 2014 and M.P. No. 1 of 2014

Hine Hydraulics India Private Ltd. APPELLANT

Vs

The Commissioner of Customs RESPONDENT

Date of Decision : 17-11-2014

Acts Referred:

Citation : (2014) 11 MAD CK 0233

Hon'ble Judges : T.S. Sivagnanam, J

Bench : Single Bench

Judgement

T.S. Sivagnanam, J.—With the consent of both the parties, these writ petitions are taken up for final hearing at the admission stage itself.

2. In this writ petition, the petitioner seeks for a direction upon the respondents to return the Bank Guarantees furnished by the petitioner in respect of the bills of entry, which were provisionally assessed.

3. In respect of one Bill of Entry, the Deputy Commissioner of Customs (Group 5), Chennai, passed a order-in-original dated 08.03.2013, confirming the order of assessment by denying the benefit of Notification No. 12/2012-CE dated 17.03.2012 in respect of the goods imported by the petitioner, as against which, the petitioner filed an appeal before the Commissioner of Customs (Appeals) and the Commissioner of Customs (Appeals), by order dated 11.04.2013, allowed the appeal filed by the petitioner and set aside the order-in-original, consequence of which, the petitioner is entitled to the benefit of exemption notification. However, the second respondent did not permit the petitioner to clear the goods, which necessitated the petitioner to file a writ petition before this Court in W.P. No. 13883 of 2013, for issuance of a direction upon the second respondent to implement the order passed by the Commissioner of Customs (Appeals) dated 11.04.2013 and extend the benefit of the exemption Notification No. 12/2012-CE dated 17.03.2012 in Serial No. 332 and release the goods covered by Bill of Entry No. 8945670 dated 04.01.2013. The above said Writ Petition was disposed of, by order dated 09.05.2013, recording the submissions made on behalf of the

respondents that they proposed to prefer an appeal against the order passed by the Commissioner of Customs (Appeals) and therefore, this Court directed that the petitioner should deposit 25% of the amount demanded and approach the Authority for release of the goods along with necessary application and on filing of such an application, the goods were directed to be released. The petitioner complied with the order passed by this Court and the goods were released. The Department filed an appeal before CESTAT against the order dated 11.04.2013 passed by the Commissioner of Customs (Appeals), but, they were not able to obtain an order of interim stay.

4. The petitioner filed a Writ Appeal against the order passed in W.P. No. 13883 of 2013, in W.A. No. 1365 of 2913, pointing out that the direction issued by this Court to the appellant to deposit 25% of the amount demanded is incorrect. The Honourable Division Bench of this Court, by Judgment dated 21.04.2014, taking note of the fact that the appeal is pending before the Tribunal, recorded the fact that the goods had already been released and no further adjudication is required in the writ appeal and the amount deposited by the appellant, namely, 25% in respect of the Bill of Entry No. 8945670 is subject to orders to be passed in the Appeal preferred by the respondent department before CESTAT.

5. It appears that in the subsequent imports also, for the purpose of provisional assessment, the respondent Department has been insisting Bank Guarantees for 25% of the amount of duty provisionally assessed. The direction issued by the Department has been complied with by the petitioner in respect of all 47 imports subsequent to the impugned Bill of Entry and they have furnished Bank Guarantees to the extent of 25% of the duty demanded.

6. The petitioner now seeks for release of those Bank Guarantees on the ground that there is no interim order granted by the Tribunal in the Appeal filed by the respondent Department as against the order dated 11.04.2013 passed by the Commissioner of Customs (Appeals). Further, the directions issued by the Honourable Division Bench of this Court pertain to only one import which was covered under Bill of Entry No. 8945670 and not for subsequent imports. The petitioner appears to have conceded to the instance of the Department to furnish Bank Guarantee for 25% for 47 subsequent imports. The said Bank Guarantees were furnished on the petitioner''s own volition and not pursuant to the directions issued by the Court or by the Tribunal. Now, the petitioner seeks for return of the Bank Guarantee. In this regard, a representation has been made on 03.06.2014 to the first respondent and the same is still pending.

7. In the light of the above facts and taking note of the conduct of the petitioner and having furnished the Bank Guarantees, which were insisted by the respondent Department, since the issue relating to the first bill of Entry is pending, the first respondent should examine as to whether the Bank Guarantees should still remain to be in force. Moreover, when the respondent Department was unable to obtain an order of stay from the Tribunal as against the order dated 11.04.2014, as on date, the order passed by the Commissioner of Customs

(Appeals) dated 11.04.2013 is valid, as there is no stay.

8. Considering these factors, the first respondent is directed to consider the petitioner''s representation dated 03.06.2014 and pass appropriate orders in this regard, on merits and in accordance with law, within a period of six weeks from the date of receipt of a copy of this order.

9. With the above direction, this Writ Petition is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.