Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 17/08/2026

**(2016) 10 MAD CK 0010**

**In the Madras High Court**

**Case No :** Writ Petition No. 31734 of 2016 and W.M.P. Nos. 27547-27548 of 2016

Its possible Marketing Ltd. APPELLANT

Vs

Union of India RESPONDENT

**Date of Decision :** 26-10-2016

**Acts Referred:**

**Citation :** (2017) 347 ELT 44

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

**Bench :** Single Bench

**Advocate :** Shri K. Radhakrishnan, Sr. Counsel For Ms. Sushma Suri, Counsel, for the Petitioner; Mrs. R. Hemalatha and Shri V. Sundareswaran, SPCs, for the Respondent

**Final Decision :** Disposed Off

## Judgement

T.S. Sivagnanam, J.—Heard Mr. K. Radhakrishnan, learned Senior Counsel appearing for Ms. Sushma Suri, learned counsel for the petitioner and Mrs. R. Hemalatha, learned Senior Panel Counsel appearing for the second respondent and Mr. V. Sundareswaran, learned Senior Panel Counsel appearing for the third respondent. With the consent of the learned counsel appearing on either side, the writ petition itself is taken up for disposal.

2. The petitioner is a Company incorporated under the provisions of the Companies Act, 1956, in the year 2007, consisting of three Directors and one of its Director was appointed as the authorised representative so as to prosecute these proceedings.

(i) The petitioner is stated to be engaged in the business of timeshare vacation in tie-up with RCI-In International Company dealing with exchange holidays and sale of discount cards in tie-up with various restaurants, shopping companies, etc. It appears that the petitioner came to know about certain products sold by the other National and International Companies and as the petitioner was interested in distributing the products to M/s. Mineral Resources International

 

(MRI), it applied for distributorship in 2008 and they were offered the sale distributorship during August, 2010. Pursuant to which, a contract was entered into between the petitioner and MRI in January, 2011. Thereafter, the petitioner started importing the products of M/s. Anderson''s Concentrated Mineral Drop ("CMD"), which according to the petitioner is a liquid mineral supplement concentrated and balanced for general energy, vitality and well being. The chemical composition of the product has been set out in Paragraph 3(v) of the writ petition.

(ii) The petitioner imported three consignments vide Bills of Entry Nos. 5605469, dated 29-12-2011; 5639718, dated 3-1-2012 and 6663354, dated 27-4-2012, which were classified under Customs Tariff Heading 3004 50 20. It is stated that no dispute was raised by the Customs Authorities regarding classification of the imported goods and the Customs duty was paid in terms of the assessment made on the respective Bills of Entry. However, when another consignment imported in respect of Bill of Entry No. 7637724, dated 10-8-2012, the Directorate of Revenue Intelligence, took up the matter for investigation, by stating that the petitioner have imported dietary supplements, but clearing the same in the guise of medicaments by classifying them under the Customs Tariff Heading 3004 50 20 instead of under Customs Tariff Heading 2106 90 99. Ultimately, the investigation proceeded in the manner contemplated under the provisions of the Customs Act, resulting in show cause notice being issued.

(iii) At that juncture, the petitioner filed a writ petition before the High Court of Delhi in W.P. (C) 6660 of 2012, for issuing a direction to the Customs Authorities to exercise their powers under Section 110A of the Customs Act, and permit provisional release of goods. The Court while disposing of the writ petition, by an order dated 13-12-2012, noted that out of three consignments, two consignments have already been cleared by executing a bond for the full value of the seized goods and the only consignment which was remaining was, is the subject matter of Bill of Entry No. 3431758, dated 6-5-2011. In fact in this writ petition, one of the reliefs pertain to the said Bill of Entry.

(iv) The High Court of Delhi after taking into consideration of the facts and circumstances of the case, directed the Commissioner of Customs to deliberate with respect to whether or not clearance ought to be made qua the consignment covered under Bill of Entry No. 3431758, dated 6-5-2011 and thereafter pass an appropriate order, as deemed fit, in accordance with the law and the exercise to be conducted as expeditiously as possible, not later than four weeks from the date of order (13-12-2012).

(v) The unfortunate situation is that the respondent did not comply with the order, within the time permitted by the High Court of Delhi. Likewise, it appears that the petitioner did not move the High Court of Delhi alleging disobedience of the order. Ultimately, show cause notice was adjudicated and Order-in-Original dated 16-12-2015 has been passed by the Commissioner of Customs and the petitioner being aggrieved by such an order has preferred an appeal before the

 

Hon''ble CESTAT and the appeal is pending. With these facts, the petitioner has come forward with this writ petition seeking for three reliefs, viz.:

(i) to direct the respondents 2 and 4 to release the Bank Guarantee, which was furnished by the petitioner;

(ii) to direct the respondents 1 to 3 to grant provisional release of the goods covered under the Bill of Entry dated 6-5-2011; and

(iii) to direct the respondents 1 to 3 to pay godown charges and compensation for the loss suffered by the petitioner due to the alleged inaction of the respondents 1 to 3.

3. The learned Senior Counsel appearing for the petitioner, on instructions, would submit that so far as the third relief sought for by the petitioner, i.e. for payment of godown charges and compensation, for the present, the petitioner does not press that relief, leaving it open to the petitioner to approach the appropriate forum at the appropriate time. This submission is placed on record, and accordingly, the relief No. (iii) is not decided and left open to the petitioner to work out the same in accordance with law.

4. With regard the first relief sought for by the petitioner, namely the release of the Bank Guarantee, it is seen that the Order-in-Original having been passed, the Bank Guarantee has itself worked out and after 16-1-2015, the Bank Guarantee has not been renewed as it has expired and it is a lapsed document. Nevertheless, unless and until the second respondent, issues necessary communication to the fourth respondent, the Bank Guarantee will not be released. In other words, the petitioner would not be in a position to deal with the Securities, which he has placed at the disposal of the fourth respondent Bank to enable the petitioner to furnish a Bank Guarantee for Rs. 85 lakhs.

5. The learned Senior Panel Counsel, for the second respondent, on instructions, would submit that since the Department is handicapped without proper documents, as the files pertain to a matter, where already order-in-original has been passed, it is submitted that if the petitioner approaches the second respondent with copies of the Bank Guarantee, necessary endorsement will be made and the fourth respondent Bank will be intimated to cancel the Bank Guarantee.

6. This statement is taken on record and accordingly, there will be a direction to the petitioner to approach the second respondent along with copies of this order and make a request for cancellation of the Bank Guarantee and for issuance of necessary communications to the fourth respondent Bank and along with the representation, the copy/copies of Bank Guarantee and shall be produced. The second respondent on receipt of the same, within a period of seven days from date of receipt of the representation, effect cancellation of the Bank Guarantee and duly intimate the same to the fourth respondent Bank with a copy marked to the petitioner.

7. This leaves us with the only issue, as to whether the petitioner would be entitled to a direction for provisional release of the subsequent cargo.

8. As rightly pointed out by the learned Senior Panel Counsel appearing for the second respondent, the power of provisional release under Section 110A of the Act could be exercised pending the order of adjudication, by releasing the same to the owner of the goods and taking a bond from him in an appropriate form with such security and condition as the adjudicating authority may require.

9. In the instant case, the order-in-original having been already passed, as early as on 16-12-2015, at this juncture, the second respondent cannot be directed to exercise power under Section 110A of the Act. However, this does not mean that the petitioner is left without any remedy. As against the order-in-original dated 16-12-2015, the petitioner has preferred an appeal, the appeal is now pending before the CESTAT in Diary No. 404612016, and the petitioner can very well move an Interim Application before the CESTAT, requesting for appropriate interim relief. Somewhat identical issue came up for consideration in the case of Collector of Customs, Madras v. Madras Electro Castings P. Ltd. [1994 (71) E.L.T. 646 (Mad.)], wherein among other things, the Hon''ble Division Bench have pointed out that Section 129B of the Act empowers CEGAT to confirm, modify or annul the decision or order appealed against and it is also open to remit the matter back for fresh adjudication. Further, in terms of Rule 41 of CEGAT (Procedure) Rules, the Tribunal may make such orders or give such directions as may be necessary or expedient to give effect or in relation to its order or to prevent abuse of its process or to secure the ends of justice. It was pointed out that the words "secure the ends of justice" are wide enough to clothe the Tribunal with powers to pass such interim orders, as it may deem fit in the facts and circumstances of the case.

10. Thus, it was held that quite inherent in the appellate power and more so in the case of the CEGAT to pass such interim orders as are necessary for the purpose of ensuring that the main relief sought in the appeal is available to the party at the end of the proceedings.

11. In the instant case, the goods were imported and Bill of Entry was filed in 2011. Though the High Court of Delhi issued directions to consider the petitioner''s application for provisional release within a period of four weeks from 13-12-2012, the order was not complied with by the Department. The adjudication of the show cause notice has taken almost three years and the order-in-original was passed on 16-12-2015. Thus, the petitioner''s case is that the goods cannot be marketed and have to be destroyed and in fact their latest representation to the second respondent on 25-1-2016, was for destruction of goods lying in the godown.

12. Thus, considering the peculiar facts and circumstances of the case and taking note of the fact that already the adjudication proceedings has been completed and Order-in-Original has been passed, the question of directing the second

 

respondent to grant provisional release of the goods, is not maintainable. Therefore, only option available for the petitioner is to move the CESTAT for appropriate interim relief.

13. Accordingly, liberty is granted to the petitioner to file an Interim Application before the CESTAT in the pending appeal for appropriate interim relief for release of goods. Considering the hard facts and the time taken for the Department to adjudicate the matter, this court is of the view that the CESTAT may consider the petitioner''s application for interim relief as expeditiously as possible, preferably, within a period of six weeks from the date on which the application is filed.

14. With the above direction, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are also closed.

 