

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.10.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.14228 of 2017 & W.M.P.No.15418 of 2017

M/s.Sai Exports, rep. by its
Proprietor, Mr.Mahesh Kumar.K,
No.85, Maruthachalapuram,
(Opp.to Go Go Garments),
Kottai Thottam, 60 Feet Road,
Tirupur-641 603.

... Petitioner

Vs.

- 1.The Commissioner of Customs (Port-Import),
Custom House, No.60, Rajaji Salai,
Chennai-600 001.
- 2.The Deputy Commissioner of Customs (Group-3),
Custom House, No.60, Rajaji Salai,
Chennai-600 001.
- 3.The Appraiser (Group-3),
Custom House, No.60, Rajaji Salai,
Chennai-600 001.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus, to call for the records of the third respondent in respect of Bill of Entry No.9317183 dated 16.04.2017 culminating in the directions for execution of bond and bank guarantee and quashing the same and direct the respondents to accept personal bond from the petitioner herein and allow clearance of the goods under provisional assessment.

For Petitioner : Mr.S.Murugappan

For Respondents : Mr.A.P.Srinivas, Standing Counsel

ORDER

Heard Mr.S.Murugappan, learned counsel for the petitioner and Mr.A.P.Srinivas, learned Standing Counsel for the respondents. With consent on either side, this writ petition is taken up for final disposal.

2.The petitioner is an importer of various textile fabrics from China and other countries and in the course of business activities, they had imported a consignment of 100% Knitted Polyester Fabric of specification (220-240 GSM) 75 X 100 Denier from China. The petitioner imported quantity at the unit price of US\$ 2, by Invoice dated 28.03.2017, the total invoice value is US\$ 300.20. Based on this, the petitioner has filed Bill of Entry No.9317183 dated 16.04.2017 before the third respondent. The third respondent has directed the petitioner to furnish bond and Bank guarantee for provisional assessment of the subject goods. Being aggrieved by the same, the petitioner is before this Court.

3.Considering the facts and circumstances of the case, I find that there is no justification on the part of the respondents to mechanically insist for furnishing bond and Bank guarantee for provisional assessment of the subject goods. This conclusion is supported by the following reasons. Earlier, the petitioner had effected three imports during the year 2013. The

respondents did not accept the declared value and enhanced the value to unit price of US\$ 4.82. The petitioner cleared the goods based on the enhanced value. Subsequently, an Order-in-Original No.21613/2013 dated 28.02.2013 was passed, against which, the petitioner filed an appeal before the Commissioner of Customs (Appeals). This appeal was rejected by order dated 24.03.2014, stating that the petitioner has not produced any evidence to substantiate their claim. As against the same, the petitioner has filed an appeal in C/40939/2014 before the CESTAT and the appeal is pending. In the year 2014, the petitioner imported similar goods under five Bills of Entry, which were all allowed clearance after endorsement of value by Order-in-Original dated 31.01.2014. This was contested before the Commissioner of Customs (Appeals) and the appeal filed by the petitioner was allowed by order dated 01.05.2014. Thus, the petitioner was able to establish that the price declared by them was the correct price of the imported goods. Aggrieved by such order, the Revenue has preferred appeal before the CESTAT and an application for stay was moved by the Revenue, which was dismissed by order dated 11.02.2015. The Revenue has not preferred any further appeal against the rejection of the stay petition. The appeal filed by the Revenue is still pending. Thus, as on date, the value declared by the petitioner in respect of identical goods has been accepted by the Commissioner of Customs (Appeals) in the order dated 01.05.2014 and such order has not been stayed by the CESTAT. Mere pendency of an appeal before the Appellate forum will not amount to stay of the order passed by the

lower forum/authority. In the instant case, the valuation of the identical goods passed by the Commissioner of Customs (Appeals) is binding on the third respondent.

4. At this juncture, it is worthwhile to refer to the decision of the Hon'ble Supreme Court of India in the case of **Union of India vs. Kamlakshi Finance Corporation Ltd.** Reported in **1991 (55) E.L.T. 433 (SC)**. In the said decision, the Hon'ble Supreme Court pointed out as to how the order of the appellate authority binds the lower authority working within its jurisdiction. The relevant portion of the judgment reads as follows.

"6.....The High Court has, in our view, rightly criticised this conduct of the Assistant Collectors and the harassment to the assessee caused by the failure of these officers to give effect to the orders of authorities higher to them in the appellate hierarchy. It cannot be too vehemently emphasised that it is of utmost importance that, in disposing of the quasi-judicial issues before them, revenue officers are bound by the decisions of the appellate authorities. The order of the Appellate Collector is binding on the Assistant Collectors working within his jurisdiction and the order of the Tribunal is binding upon the Assistant Collectors and the Appellate Collectors who function under the jurisdiction of the Tribunal. The principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the

subordinate authorities. The mere fact that the order of the appellate authority is not "acceptable" to the department - in itself an objectionable phrase - and is the subject-matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent Court. If this healthy rule is not followed, the result will only be undue harassment to assesseees and chaos in administration of tax laws".

5. Thus, the third respondent cannot mechanically insist upon the production of bond and Bank guarantee without referring to the earlier decision passed by the Commissioner of Customs (Appeals), which is in favour of the petitioner.

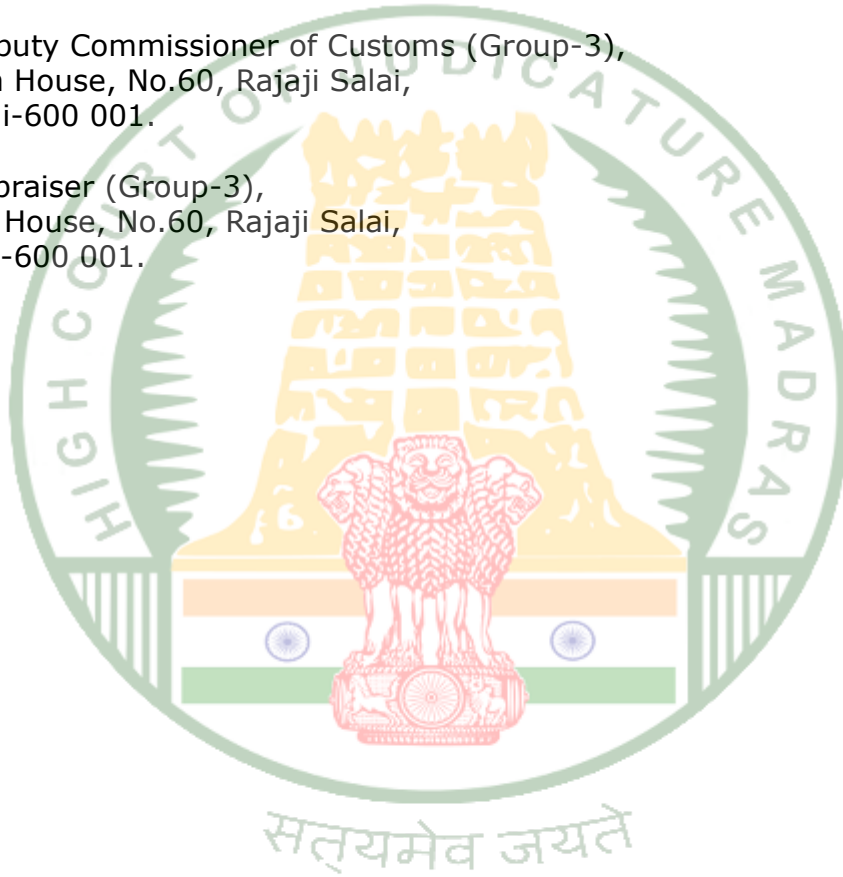
6. In the light of the above, the writ petition is allowed, the impugned order is quashed and the respondent is directed to provisionally assess the subject goods relating to Bill of Entry dated 16.04.2017 without mechanically insisting upon personal bond and the Bank guarantee by taking note of the decision of the Commissioner of Customs (Appeals) dated 01.05.2014 in Order in Appeal C.Cus No.745/2014 and pass appropriate orders for release of the goods on provisional assessment within a period of three weeks from the date of receipt of a copy of this order. No costs. Consequently, connecte miscellaneous petition is closed.

09.10.2017

Index:Yes/No
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To

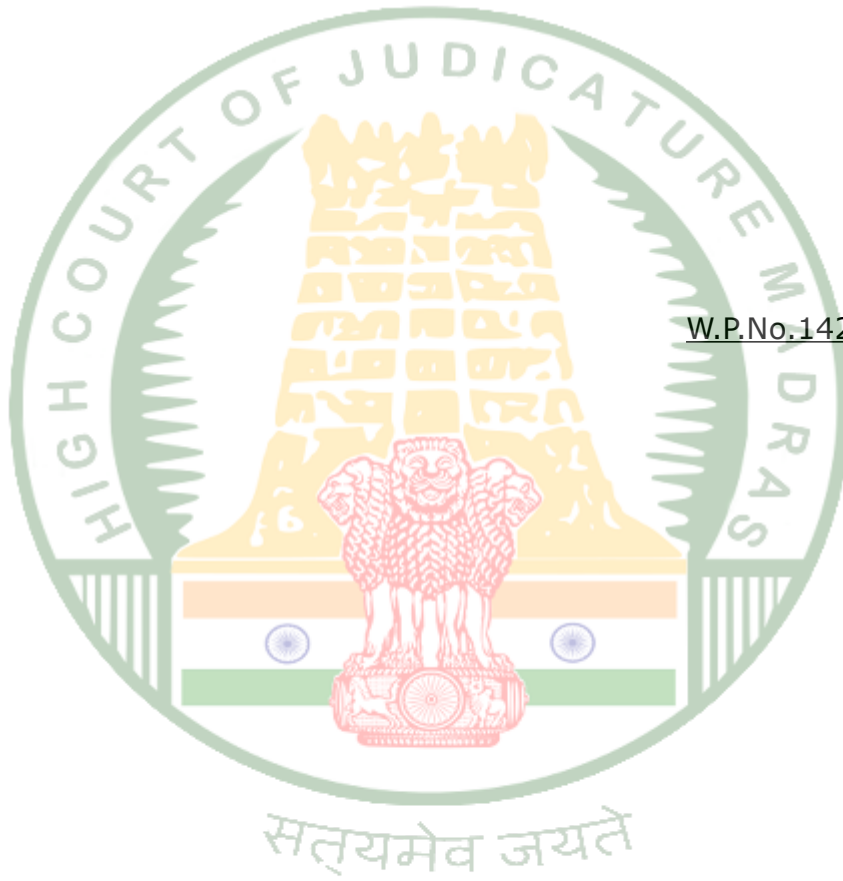
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T.S.SIVAGNANAM, J.

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