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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30/09/2011

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THE HONOURABLE Mr.JUSTICE S.MANIKUMAR

WP (MD) No.11344 of 2011 and MP (MD) No.1 of 2011

M/s.Best Mega International,
Rep. by its Proprietor Mr.Rajesh Kumar Khettarpal

:Petitioner

-Vs-

1.The Commissioner of Customs, Custom House,
New Harbour Estate, Tuticorin 628 004.

2.The Additional Commissioner of Customs,
Custom House, New Harbour Estate, Tuticorin 628 004.

:Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Mandamus directing the first and second respondents herein to release the goods viz., 97 Units of old and used digital Multifunction Print and Copying Machines of various models imported vide Bill of Entry No.4626504, dated 13.09.2011 under free as second hand capital goods in terms of para 2.17 read with definitions under 9.12 Foreign Trade Policy 2009 - 2014 without imposing any restriction in the absence of specific restriction in para 2.17 of Foreign Trade policy and in para 2.33 of Hand Book of procedures 2009 - 2014 and any Notification in compliance of the final order of Hon'ble CESTAT, Bangalore Bench, vide Final Order No.405 to 416 of 2011 dated 27/6/2011.

For Petitioner :Mr.A.K.Jayaraj
For Respondents:Mr.Vijaykarthikeyan

ORDER

Sri Best Mega International, represented by its Proprietor, has submitted Bill of Entry No.4626504, dated 13.09.2011, and sought for a Mandamus, directing the respondents, to release the goods viz., 97 units of Old and Used Digital Multifunction Print and Copying Machines of various models.

2.On the merits of the case, the petitioner has contended that, the above said goods, do not attract, counter veiling duty at the rate levied by the Customs Department. Placing reliance on various orders passed by this Court and appended in the typed set of papers, appended to the written petition and additional typed set of papers, Mr.A.K.Jayaraj, learned counsel appearing for the petitioner submitted that, the orders passed by the written Court directing release of the above said goods, Bill of Entry, were challenged on appeal by the Customs Department and that the same have been dismissed. Series of orders passed by this Court were referred.

3.Mr.Vijaykarthikeyan, who took notice, on instructions, submitted that, the import cargo after usage is reported to result in generation of e-waste. The District Environment Engineer, Tuticorin and hence the said import has to be governed under Hazardous Waste (Management, Handling and Transboundary) Rules, 2008 and as per the said rules, prior permission has



to be obtained from Ministry of Environment and Forest for importing such cargo. He also submitted that a show cause notice had already been issued to the importer and that the same has been returned undelivered, with the postal endorsement "left without instruction". According to the learned Standing Counsel for Customs, as proceedings have already been initiated by the Department, the writ petition is not maintainable. The submission of the learned Standing counsel is placed on record.

4. Heard the learned counsel appearing for the parties and perused the materials available on record.

5. Earlier, when a similar writ petition was filed by M/s. Polycraft in W.P.No.18959 of 2009, a learned Single Judge of this Court, by order dated 18/9/2009, after considering the objections of the Senior Panel Counsel that, in certain cases, goods were released on payment of 40% of the enhanced value, has passed the following order:

"Taking into account, the facts and circumstances, there shall be a direction to the respondents 1 and 2 to release the goods, upon the petitioner paying 25% of the total value."

6. When the correctness of the abovesaid interim order was tested in W.A.No.1508 of 2009, a Division Bench of this Court, after considering the submissions, at length, vide order dated 21/10/2009, has confirmed the interim order and after observing that the respondents therein had already paid 25% of the enhanced value, disposed of the writ appeals, with a direction to the Customs Department to release the Digital Multifunction Machines, immediately on the first respondent furnishing a bank guarantee for the remaining 12 ½% of the Chartered Engineer's value or enhanced value.

7. Yet another writ petition in W.P.No.9914 of 2009 was filed before this Bench by M/s. City Office Equipment, rep by its Proprietor Mr. Pawan Kumar Jhun Jhun Wala, Chennai, mandamus has been sought for, to release the old and used various models of Canon Brand Digital Multifunction Print and Copying Machines and Bills of Entries.

8. Following the decision of this Court, made in W.P.No.21782 of 2009 dated 26/10/2008 (M/s. Ashwani Enterprises Vs. The Commissioner of Customs (Sea Port Import) and two others and the order made in W.A.No.1508 of 2009 {The Commissioner of Customs (Imports), Seaport, Chennai and another Vs M/s. Polycraft Exports (P) Ltd., and another} dated 21/10/2009 referred to earlier, this Court in W.P.No.9914 of 2009 dated 4/11/2009 has granted a mandamus permitting the petitioner to deposit 25% of the enhanced value apart from furnishing Bank guarantee to the extent of 12.5% on the enhanced value. This Court further ordered the respondents to release the goods, with liberty to them to proceed in accordance with law.

9. Material on record further discloses that when M/s. Vindhya Vashini Trading Company, rep. By its Proprietor, has filed W.P.No.7531 of 2010, <https://hccseebhakti.courts.gov.in/hsccm/hsccm.aspx> seeking similar relief, orders made earlier by this Court in several matters, in W.P.No.5754 dated 5/4/2010 (M/s. Raju Copiers Vs. The Commissioner of Customs (Seaport - Import), Chennai and others and



W.A.No.1508 of 2009 dated 26/10/2009, similar directions have been granted. An appeal preferred by the Customs Department in W.A.No.1445 of 2010 against the order made in W.P.No.7531 of 2010 has been dismissed on 5/8/2010 and the order reads as follows:-

"Heard the counsel for the parties and perused the impugned order passed by the learned single Judge in the interlocutory application filed by the first respondent herein. Having regard to the fact that the learned Single Judge, following the earlier orders passed in Writ Appeal No.1508 of 2009 and writ petition No.6764 of 2010, directed release of the goods subject to payment of 25% of the enhanced value, apart from the duty payable by the first respondent i.e., Rs.3,47,007/-, we do not find any reason to differ with the order passed by the learned single Judge. This appeal is, therefore, dismissed. It is made clear that the interim order passed by the learned Single Judge will not in any way prejudice the case of the appellants herein in taking all the points in the writ petition."

10. Following the earlier orders, in particular W.A.No.1508 of 2009 dated 26/10/2009, similar orders have been passed by this Court in W.P.No.25811 of 2010 dated 2/12/2010, W.P.No.13506 of 2011 dated 13/6/2011, directing the release of the goods, on deposit of 25% of the enhanced value, apart from paying the applicable rate of duty on the enhanced value. On complying with the above said conditions, the respondents are directed to release the goods with liberty to the respondents to proceed in accordance with law. In W.P.No.13566 of 2011, even though the department has contended that investigation was under process in respect of import of the above said orders and that adjudicating process would be taken and further contended that, in the event of this Court directing release of the goods, on depositing 40% of the enhanced value, this Court, vide order, has directed release of the goods on depositing 25% of the enhanced value, apart from paying the applicable rate of duty on enhanced value.

11. Additional typed set of papers also contain orders passed in W.P.Nos.13566 of 2011, W.A.Nos.1190 to 1194 of 2011 on the same lines. Thus it is, consistent view of this Court that the importer is entitled to get the goods viz., released on deposit of 25% of the enhanced value apart from paying the applicable rate of duty on the enhanced value. When the Customs Department filed W.A.Nos.1190 to 1994 of 2011, against the orders made in W.P.Nos.13566 of 2011, 13567 of 2011, 19842 of 2011, 13827 of 2011 and 14151 of 2011 respectively, the Hon'ble First Bench vide order dated 20/7/2011 in the above appeals, has refused to grant stay and further directed the appellant to comply with the orders made in the writ petitions. Subsequently, when the above writ appeals came up on 18/8/2011 along with other appeals filed by the Customs Department, the Division Bench has passed the following orders.

<https://hcservices.ecourts.gov.in/hcservices/> "Learned counsel appearing for the appellants submitted that pursuant to the impugned order passed by the learned Single Judge the goods have been



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released, and hence the appellants may be permitted to withdraw the appeals with liberty to raise all the points at the time of adjudication of proceedings.

2. In the impugned order, the learned single Judge, while issuing direction to deposit the amount, gave liberty to proceed further with the adjudication proceedings in accordance with law.

3. Hence, the writ appeals are dismissed as withdrawn with liberty as prayed for. No costs. Consequently, connected Miscellaneous Petitions are closed."

12. In the light of the above, the objections of the respondents for release of the goods, are overruled. Accordingly, a direction is issued to the respondents to release the goods in 97 Units of old and used Digital Multifunction Print and Copying Machines of various models at USD 20,970.00 (C&F), Tuticorin, under Bill of Entry No.4626504, dated 13.09.2011, on the petitioner depositing 25% of the enhanced value, apart from the duty payable on the enhanced value and on complying with the abovesaid conditions, respondents are directed to release the goods forthwith. Liberty is given to the respondents to proceed further with adjudication proceedings, in accordance with law and that the petitioner shall also co-operate in the above said process.

13. With the above directions, this writ petition is disposed of. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar (T&P)

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Sub Assistant Registrar

To:

1. The Commissioner of Customs
Custom House
New Harbour Estate
Tuticorin 628 004.

2. The Additional Commissioner of Customs
Custom House
New Harbour Estate
Tuticorin 628 004.

+1CC to Mr.M.A.Abdul Wahab, Advocate. SR.No.34515.

+1CC to Mr.B.Vijay Karthikeyan, Advocate. SR.No.34323.

<https://hcservices.ecourts.gov.in/hcservices/>

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RP/30.09.2011/4P/5C.

Order made in W.P. (MD) No.11344 of 2011
Dated:- 30.09.2011