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W.P.No.15181 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.05.2023

CORAM

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.P.No.15181 of 2023 and
W.M.P. Nos.14679 and 14680 of 2023

Big Bags International Pvt. Ltd.,
rep. by its Head-RM Procurement and
Domestic Sales-Sumit Bajoria

... Petitioner

vs.

1.The Commercial of Customs,
(Sea Port -Export),
Custom House,
60, Rajaji Salai,
Chennai – 600 001.

2.The Assistant Commissioner of Customs,
ARC, Export Commissionerate,
Office of the Commissioner of Customs (Chennai IV),
Custom House,
60, Rajaji Salai,
Chennai – 600 001.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records in the proceedings of the second respondent in Order No.F.No.ARC-131/2019-CH-1 and DIN:20230573M20000010619 dated 03.05.2023 and quash the same as arbitrary and illegal.



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For Petitioner : Mr. Joseph Prabakar

For Respondents : Mr. Arvind Srevatsa,
Junior Standing Counsel

ORDER

By consent of both the parties, this writ petition has been taken up for final disposal at the admission stage itself.

2. Mr. Arvind Srevatsa, learned Junior Standing Counsel accepts notice on behalf of the respondents.

3. The petitioner has filed the Writ Petition, praying for a Writ of Certiorari to call for the records in the Proceedings of the second respondent in Order No.F.No.ARC-131/2019-CH-1 and DIN: 20230573M20000010619 dated 03.05.2023 and quash the same as arbitrary and illegal.

4. The petitioner had engaged in the manufacture of Flexible Intermediate Bulk Container Bags, which are designed for storing and transporting dry and flowable products, such as sand, fertilizer and

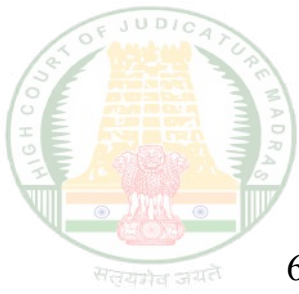


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granules. While so, the first respondent had issued an Order-in-Original dated 21.02.2011, whereby confirming the proposal of recovery of drawback and imposed penalty of a sum of Rs.2,50,00,000/- under Section 114(iii) of the Customs Act 1962. Aggrieved by the same, the petitioner filed an Appeal before the Customs, Excise and Service Tax Appellate Tribunal, Chennai. Pursuant to the dismissal of the above Appeal, the petitioner filed a Petition for rectification of mistake under Section 129 B(2) of the Customs Act, 1962 before the Tribunal, which by order dated 04.11.2019, confirmed the penalty of Rs.2,50,00,000/-, imposed on the petitioner. Challenging the same, the petitioner has filed a Civil Miscellaneous Appeal No.735 of 2020 before the Division Bench of this Court.

5.This Court, by an interim order dated 22.09.2020, directed the respondents Department not to take any coercive steps for recovery of demand raised on account of the issue, which is pending with the Adjudicating Authority in pursuance of an order of remand dated 04.11.2019.



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6.Despite the said interim order, it appears that some steps were taken against the petitioner and therefore, the petitioner was constrained to approach the Division Bench of this Court in C.M.P. Nos.4533, 6715, 6948 and 6987 and 2020 in C.M.A. Nos.735, 1059, 1098 and 1111 of 2020 and the Division Bench of this Court, by interim order dated 21.04.2021, referring to the earlier interim order granted on 22.09.2020, observed that action taken to attach the bank account of the petitioner was clearly in violation of the order passed by the Division Bench of this Court and directed the respondents to raise the order of attachment forthwith.

7.Now, it is seen that the second respondent, by impugned communication dated 03.05.2023, has called upon the petitioner to pay the penalty amount of Rs.2,50,00,000/-, within 7 days from the date of receipt of the notice and informed that in case of failure, action will be initiated against the petitioner in accordance with the provisions of Section 142(1)(c)(iii) of the Customs Act, 1962.

8.Despite interim orders already in force, there is no justification on the part of the respondents to issue the impugned letter dated 03.05.2023.



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Therefore, this Court feels that the writ petition can be allowed setting aside the impugned letter, which is clearly in violation of the earlier orders passed by the Division Bench of this Court, referred herein above. Accordingly, this writ petition stands allowed and the impugned letter dated 03.05.2023 is set aside. Consequently, connected W.M.Ps stand closed. No costs.

9.It is made clear that the interim orders dated 22.09.2020 and 21.04.2021, passed by the Division Bench of this Court shall be respected by the respondents.

10.05.2023

Index : Yes/No
Speaking Order/Non-Speaking Order
vga

To

- 1.The Commercial of Customs,
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- 2.The Assistant Commissioner of Customs,
ARC, Export Commissionerate,
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