

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT NO. III

Customs Stay Application No. 40147 of 2021

(on behalf of appellant)

In

Customs Appeal No. 40240 of 2021

(Arising out of Order-in-Appeal Seaport C.Cus.II No. 136/2021 dated 19.03.2021 passed by the Commissioner of Customs (Appeals-II), No. 60, Rajaji Salai, Custom House, Chennai – 600 001)

M/s. PPN Power Generating Co. Private Limited

"Sunny Side", West Block, Ist Floor,
No.8/17, Shafee Mohammed Road,
Thousand Lights, Chennai – 600 006

**: Appellant/
Applicant**

VERSUS

The Commissioner of Customs

Chennai-II Commissionerate,
Custom House, No. 60, Rajaji Salai, Chennai – 600 001

: Respondent

APPEARANCE:

Shri Hari Radhakrishnan, Advocate for the Appellant/Applicant

Shri R. Rajaram, Authorized Representative for the Respondent

CORAM:

HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)

HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

MISC. ORDER NO. 40133 / 2021

DATE OF HEARING: 22.09.2021

DATE OF DECISION: 22.09.2021

Order Per : Hon'ble Ms. Sulekha Beevi C.S.

The above miscellaneous application has been filed by the petitioner/appellant seeking stay of operation of the impugned order dated 19.03.2021.

2.1 Learned Counsel Shri Hari Radhakrishnan appeared on behalf of the applicant. It is submitted by him that the appellants have registered themselves under the Project Import Regulations, 1986 to set up a power plant at

Pillaiperumalnallur, Nagapattinam District. That they imported goods for the project and the Bills-of-Entry were provisionally assessed as per the Project Import Regulations, 1986. That apart from the above, in respect of few Bills-of-Entry, the appellant had paid Duty at merit rate due to exigency clearances, as required by them. The invoices raised by the overseas supplier were provided by the appellant to the Customs authorities along with the Bills-of-Entry and related documents and the Duty had been collected by the Customs authorities based on the value mentioned in the said invoices under provisional assessment. That after erection and commissioning of the power plant, the appellant submitted a proposal to the Commissioner of Customs, Seaport, Chennai requesting for finalization of provisional assessment vide their letter dated 26.12.2002. That pursuant to this, the assessment was finalized by passing the Order-in-Original No. 71671/2019 dated 27.09.2019, the operative portion of which reads as under:

"50. In view of the foregoing discussions, I pass the following order.

ORDER

- (a) I order finalisation of all the Bills of Entry under Section 18(3) of the Customs Act, 1962.*
- (b) I confirm the demand of Rs.9,54,10,789/- (Rupees Nine Crores Fifty Four Lakhs Ten Thousand Seven Hundred and Eighty Nine only) towards differential duty.*
- (c) I demand Rs.2,14,88,442/- (Rupees Two Crores Fourteen Lakhs Eighty Eight Thousand Four Hundred and Forty Two only) for the Single Point Mooring System towards differential duty.*
- (d) I order appropriation of the Cash Security Deposit of Rs.1,00,00,000/- (Rupees One*

Crore only) towards the above mentioned differential duty.

- (e) *I levy a penalty of Rs.1,00,00,000/- (Rupees One Crore only) under Section 112(a) of the Customs Act, 1962 on M/s. PPN Power Generating Company Private Limited.*
- (f) *I levy a penalty of Rs.1,00,00,000/- (Rupees One Crore only) under Section 112(a) of the Customs Act, 1962 on M/s. Marubeni Corporation.”*

2.2 Aggrieved by the above confirmation of demand as well as penalty by the Adjudicating Authority, the assessee preferred an appeal before the Commissioner (Appeals). The Department also filed an appeal before the Commissioner (Appeals) *inter alia* on the ground of non-levy of redemption fine and requested to remand the matter for re-adjudication. The Commissioner (Appeals) allowed the appeal filed by the Department and remanded the matter for re-adjudication. The above appeal is filed by the appellant against such order passed by the Commissioner (Appeals) remanding the matter to the Adjudicating Authority.

3.1 It is submitted by the Learned Counsel for the applicant that if the matter is taken up for de novo adjudication by the Original Authority, the present appeal filed by the appellant will become infructuous and the remedy of the appellant by way of appeal itself would be defeated. Further, that it would lead to multiplicity of proceedings.

3.2 He therefore prayed that the operation of the order passed by the Commissioner (Appeals) remanding the matter may be stayed.

4. Learned Authorized Representative Shri R. Rajaram appearing on behalf of the Department opposed the application.

5. After taking into consideration the averments in the application for stay as well as the submissions made at the time of hearing, we find that the arguments put forward by the Learned Counsel for the appellant is not without substance. We therefore direct that status quo be maintained by both sides.

6. The miscellaneous application is disposed of accordingly.

(Operative part of the order pronounced in open court)

Sd/-
(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

Sd/-
(P. ANJANI KUMAR)
MEMBER (TECHNICAL)