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* **HIGH COURT OF DELHI : NEW DELHI**

+ **LPA No. 262 of 2010**

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Decided on: May 11, 2010

1. M/s Navshakti Industries Pvt. Ltd.
18/61, Punjabi Bagh (West)
New Delhi-110026.
2. Praveen Goel, S/o K.C. Goel, Director
M/s Navshakti Industries Pvt. Ltd.
18/61, Punjabi Bagh (West)
New Delhi-110026.

..... Appellants

Through: Mr. Neeraj Kishan Kaul, Sr. Adv.
with Mr. T.P.S. Kang and Mr. M.M.
Alam, Advs.

Versus

1. Commissioner of Customs
ICD, TKD
New Delhi.
2. Additional Director General
Directorate of Revenue Intelligence
6th Floor, Paryavaran Bhawan
CGO Complex, Lodhi Road
New Delhi-110003.
3. Assistant Director
Directorate of Revenue Intelligence
6th Floor, Paryavaran Bhawan
CGO Complex, Lodhi Road

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the digital data is as per the physical
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New Delhi-110003.

..... Respondents

Through: Mr. Mukesh Anand with Mr. Shailesh
Tiwari, Mr. Sumit Batra & Mr.R.C.S.
Bhadoria, Advs. for Resp. No.1.
Mr. Satish Aggarwal with Mr. Shirish
Aggarwal, Advs. for Resps. 2 & 3

Coram:

HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MS. JUSTICE MUKTA GUPTA

1. Whether the Reporters of local papers may
be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported
in the Digest? Yes

MADAN B. LOKUR, ACJ (ORAL)

The Appellants are aggrieved by an order dated 3rd March,
2010 passed by a learned Single Judge in WP (C) No. 2228/2008.

2. The Appellants had imported newsprint under the Open
General Licence. When the goods arrived at the port, they were finally
assessed to duty which was paid by the Appellants and the goods
cleared.

(S)

3. Subsequently, it appears that Respondents No. 2 and 3 received some information that the goods were being diverted for purposes other than newsprint. Acting on this information, the goods of the Appellants were seized in exercise of powers conferred by Section 111(o) the Customs Act, 1962. The Appellants then sought release of the goods on a provisional basis after their seizure and an order was passed by the Respondents on 9th January, 2008 apparently in exercise of power conferred by Section 110A of the Act agreeing to the release of the goods on the following four conditions: -

- “(i) Payment of differential duty involved on the seized goods;
- (ii) Execution of bank guarantee to the extent of 25% of the seizure value;
- (iii) Execution of indemnity bond to the extent of full seizure value of seized goods;
- (iv) Execution of an affidavit by the party that he will not challenge the identity of the said seized goods during the course of adjudication or prosecution proceedings, if any.”

4. The Appellants were of the view that the conditions were rather harsh and, therefore, filed a writ petition which led to the impugned order dismissing the writ petition and upholding the

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conditions imposed by the Respondents.

5. It is submitted by learned counsel for the Appellants, relying upon a Division Bench decision *M/s Bhaiya Fibres Ltd. v. Additional Director General, Directorate of Revenue [WP (C) No. 8787/2007 decided on 19th December, 2007]* that provisional release of the goods is permissible under the Customs (Provisional Duty Assessment) Regulations, 1963 and the terms and conditions therein would be applicable to the facts of this case. Reliance is placed upon Regulation 2 thereof which reads as follows: -

“REGULATION 2. Conditions for allowing provisional assessment.- Where the proper officer on account of any of the grounds specified in sub-section (1) of section 18 of the Customs Act, 1962 (52 of 1962), is not able to make a final assessment of the duty on the imported goods or the export goods, as the case may be, he shall make an estimate of the duty that is most likely to be levied hereinafter referred to as the provisional duty. If the importer or the exporter, as the case may be, executes a bond in an amount equal to the difference between the duty that may be finally assessed and the provisional duty and deposits with the proper officer such sum not exceeding twenty per cent of the provisional duty, as the proper officer may direct, the proper officer may assess the duty on the goods provisionally at an amount equal to the provisional duty.”

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6. According to learned counsel for the Appellants, since the goods were finally assessed to duty and cleared unconditionally in the first instance, the power available to the Respondents under Section 110A of the Act must be sparingly used and should not be punitive. In this context, it is submitted that if the goods had been provisionally released at the time of import, the Appellants would have had to pay only 20% of the differential duty. However, in the present case the goods were finally cleared by the Respondents without demur in the first instance, and so the Appellants cannot be in a worse off position than if the goods were provisionally assessed under Section 18 of the Customs Act read with Regulation 2 of the aforesaid Regulations. It is, therefore, submitted on behalf of the Appellants that even after seizure, the goods can be cleared provisionally on the Appellants furnishing a bond of 20% of the differential duty.

7. On the other hand, it is submitted by learned counsel for the Respondents that Section 110A of the Act permits the Respondents to impose appropriate conditions for the release of the goods. It is submitted that the goods were diverted contrary to the Open General Licence. There is, therefore, a violation of Section 111(o) of the Act

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and it is under these circumstances that the goods were seized. If the Appellants desire to have release of the goods, they must comply with the conditions laid down under Section 110A of the Act. It is submitted that the conditions laid down on the facts of this case are eminently reasonable and do not require any interference by this Court.

8. Section 111(o) and Section 110A of the Customs Act read as follows:-

“111. Confiscation of improperly imported goods, etc. – The following goods brought from a place outside India shall be liable to confiscation: -

(a) to (n) xxx xxx xxx

(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer.”

110A. Provisional release of goods, documents and things seized pending adjudication. – Any goods, documents or things seized under Section 110, may, pending the order of the adjudicating officer, be released to the owner on taking a bond from him in the proper form with such security and conditions as the Commissioner of Customs may require.”

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9. Having heard learned counsel for the parties and having perused the decision relied upon by learned counsel for the Appellants, we are of the view that in the absence of any definite parameters having been laid down for the exercise of power by the Respondents under Section 110A of the Act, the only option that would be available to us would be to fall back on the Customs (Provisional Duty Assessment) Regulations, 1963. While it may be true that these Regulations would be applicable, *stricto sensu*, only in cases of provisional assessment under Section 18 of the Act, we are of the opinion that the guidelines laid down in these Regulations, in the absence of any other guidelines available to us, would equally apply in the case of a seizure under Section 110 A of the Act, particularly in a case such as the present where the imported goods were unconditionally cleared by the Customs Authorities in the first instance.

10. That being the position, there is no option but to permit the release of the goods of the Appellants on their furnishing a bond of 20% of the differential duty that is to say the duty claimed by the Respondents minus the duty already paid by the Appellants in the first

instance. Condition No. (i) imposed by the order dated 9th January, 2008 would stand modified to that extent.

11. Insofar as the second condition is concerned (requiring the Appellants to furnish 25% of the value of the goods by way of a bank guarantee) we cannot overlook the fact that the goods were finally cleared by the Respondents after making an assessment in the first instance, and that the Appellants paid the entire duty on the goods as far back as in 2006. It is only thereafter, that is, on 22nd December, 2006 that a show cause notice was issued to the Appellants for diversion of the goods and, therefore, their seizure. In other words, the duty paid by the Appellants is lying with the Respondents for the last over four years and we are told that the adjudication proceedings are nowhere near completion: in fact the relied upon documents have been supplied to the Appellants only as recently as on 29th March, 2010. Therefore, we do not foresee the conclusion of the adjudication proceedings in the near future. We have also been informed that no prosecution has been launched against the Appellants for a violation of Section 111(o) of the Act till date.

12. Taking all these facts into consideration as well as the fact that the amount of duty paid has been lying with the Respondents for the last so many years, we do not think it appropriate to continue with the condition requiring the Appellants to deposit 25% of the value of the seized goods by way of a bank guarantee to the satisfaction of the Respondents.

13. There is no dispute about the third and fourth conditions imposed by the Respondents and, therefore, we need not go into that aspect of the matter except to make it clear that the Respondents will not dispute the identity of the goods which have been seized by the Respondents.

14. The Respondents are directed to clear the goods of the Appellants on the Appellants furnishing a bond of 20% of the differential duty to the satisfaction of the concerned Commissioner of Customs.

15. The appeal is allowed and the directions given by the learned Single Judge are set aside.

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16. Dasti.

Madan Lokur
ACTING CHIEF JUSTICE

Mukta Gupta
MUKTA GUPTA, J

MAY 11, 2010
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