IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 25TH DAY OF MARCH 2015/4TH CHAITHRA, 1937

WP(C).No. 7815 of 2015 (B)

PETITIONER(S):

M/S. HOMEY ENTERPRISES,
DOOR NO.CC 40/3219, GROUND FLOOR, BROADWAY LANE
MATHER BAZAR
ERNAKULAM - 682 031, REP. BY ITS PROPRIETRIX.

BY ADVS.SRI.C.K.KARUNAKARAN
SRI.JOPHY POTHEN KANDANKARY

RESPONDENT(S):

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1. THE COMMISSIONER OF CUSTOMS
   CUSTOM HOUSE, COCHIN - 682 009.

2. DEPUTY COMMISSIONER OF CUSTOMS (SIIB)
   CUSTOM HOUSE, COCHIN - 682 009.

3. ASSISTANT COMMISSIONER OF CUSTOMS (IMPORTS)
   CUSTOM HOUSE, COCHIN - 682 009.

4. SUPERINTENDENT OF CUSTOMS (SIIB)
   CUSTOM HOUSE, COCHIN - 682 009.

BY ADV. SRI.JOHN VARGHESE,SC
BY SRI.THOMAS MATHEW NELLIMOOTTIL,SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 25-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PJ

WP(C).No. 7815 of 2015 (B)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P-1:	**TRUE COPIES OF BE NO.8034140 DATED 19.1.2015 THE INVOICE DATED 4.1.2015 OF M/S.SHAODONG COUNTY LONGFENG INDUSTRY CO.LTD., CERTIFICATE OF ORIGIN, PACKING LIST DATED 4.1.2015**
EXT.P-2:	**TRUE COPY OF PETITIONER'S LETTER DATED 19.1.2015 TO THE 3RD RESPONDENT**
EXT.P-3:	**TRUE COPY OF THE 2ND RESPONDENT'S LETTER NO.AP/INT/05/2015-SIIB DATED 21.1.2015**
EXT.P-4:	**TRUE COPY OF THE MAHAZAR DATED 24.1.2015**
EXT.P-5:	**TRUE COPY OF THE PETITIONER'S LETTER DATED 4.2.2015**
EXT.P-6:	**TRUE COPY OF THE ORDER P.NO.SIIB/02/2015 - CUS DATED 9.2.2015**
EXT.P-7:	**TRUE COPY OF SECURITY BOND DATED 10.2.2015**
EXT.P-8:	**TRUE COPY OF BOND GUARANTEE DATED 13.2.2015**
EXT.P-9:	**TRUE COPY OF LETTER DELIVERED TO THE 4TH RESPONDENT ON 18.2.2015**
EXT.P-10:	**TRUE COPY OF THE HANDWRITTEN SLIP HANDED OVER TO THE PETITIONER'S REPRESENTATIVE BY THE 4TH RESPONDENT**
EXT.P-11:	**TRUE COPY OF BE NO.6652169 DATED 4.9.2014 THE INVOICE DATED 5.7.2014 AND PACKING LIST DATED 5.7.2014 OF M/S.SHAODONG COUNTY LONGFENG INDUSTRY CO.LTD.**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.K.JAYASANKARAN NAMBIAR, J.
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W.P.(C). No. 7815 of 2015
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Dated this the 25th day of March, 2015

JUDGMENT

The petitioner, who had imported a consignment of Refillable Electronic Lighters, with and without LED Lights, presented the same for clearance through customs, by filing the necessary bills of entry. The bills of entry were assessed, and the assessable value arrived at, based on the declaration filed by the petitioner at the time of presenting the bills of entry. Subsequently, however, the respondents, acting on data available with them, revised the assessable value and demanded a differential duty from the petitioner, based on an enhanced assessable value determined provisionally by them, as a condition for the provisional release of the goods. It was at that stage, and on receipt of a demand for differential duty as a condition for clearance of the goods, that the petitioner approached this court with the present writ petition.

2. I have heard the learned counsel appearing for the petitioner and also the learned Standing Counsel appearing for the respondents as well.

3. On a consideration of the facts and circumstances of the case, and the submissions made across the bar, I find that in Ext.P6

notice, that was issued to the petitioner by the respondent while permitting a provisional clearance of the imported goods, there are three conditions which are mentioned for compliance by the petitioner. The said conditions read as follows:

1. Payment of duty on the revised Assessable value.
2. Furnishing Cash Deposit at Customs Treasury or Bank Guarantee from a Nationalized Bank for Rs.5,00,000/-.
3. Executing a Bond for the revised Assessable Value.

4. I note from the details made available to me by the learned Standing Counsel that, the difference in the duty demanded, pursuant to an enhancement of the assessable value by the respondents, comes to approximately Rs.11 lakhs. It is this amount, that has to be secured for the purposes of safeguarding the interest of the revenue, pending finalisation of the assessment. Consequently, it is in this backdrop that the conditions in Ext.P6 communication issued to the petitioner, have to be examined for their legality. The learned counsel for the petitioner would submit that he has already furnished a bank guarantee of Rs. 5 lakh and that he has no objection to executing the bond for the revised assessable value as determined by the respondents. The question therefore, arises as to what should be the amount, that should be paid by the petitioner, towards duty on the revised assessable

value, pending finalisation of the assessment by the respondents.

5. On a consideration of the facts and circumstances of the case, and taking into account the fact that the petitioner had already declared a value, which has not been found to be wrong by the respondents in any adjudication proceedings, and further that the respondents are only in the process of investigating as to whether the goods would be required to discharge duty at a higher value, I feel that the ends of justice would be met by requiring the petitioner to pay an amount of 20% of the differential duty demanded by the respondents, as an additional condition for obtaining provisional release of the goods from the respondents. Accordingly, the conditions in Ext.P6 communication issued to the petitioner will now stand modified, and the petitioner will be required to comply with the following conditions for obtaining a release of the goods covered by bill of entry No.8034140 dated 19.01.2015.

(i) Payment of 20% of the differential duty amount as determined by the respondents (20% of approximately Rs.11 lakhs).

(ii) Furnishing bank guarantee from a

nationalised bank for Rs.5,00,000/-.

(iii) Executing a bond for the revised assessable value.

6. These conditions are in addition to the requirements of payment of duty by the petitioner, on the declared value. If the petitioner complies with the aforesaid conditions, then the respondents shall forthwith release the goods, that have been imported by the petitioner under cover of the aforementioned bill of entry.

The writ petition is disposed accordingly.

sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

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