IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 26945 of 2014.
Date of Decision : 23.01.2015.

M/s Gaurav Electronics

...Petitioner

Versus

Additional Commissioner of Customs Sahnewal and another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA.
HON'BLE MR. JUSTICE B.S. WALIA.

Present: Mr. Saurabh Kapoor, Advocate for the petitioner.

Mr. D.D. Sharma, Advocate for the respondents.

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Rajive Bhalla, J.(Oral)

The petitioner prays for issuance of a writ of certiorari for quashing the provisional release order dated 22.12.2014 insofar as it directs the petitioner to furnish a bank guarantee of 25% of the differential assessable value to be determined at the time of provisional duty assessment.

Counsel for the petitioner submits that as the petitioner has deposited ₹30 lacs and undertakes to deposit the differential duty as calculated by the respondents, the condition demanding a bank guarantee for the release of goods is unnecessary. Counsel for the petitioner further submits that in case of any further demand being raised, the petitioner is ready to furnish such personal bond/ guarantee/undertaking as the department may deem appropriate.

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Counsel for the revenue submits that the condition of a bank guarantee has been imposed as certain other amount may become due from the petitioner at the time of final adjudication. The bank guarantee would protect the interest of the revenue. The condition of bank guarantee may, therefore, not be quashed.

We have heard counsel for the parties, perused the impugned order.

The petitioner has paid ₹30 lacs as demanded and has undertaken to pay the entire amount of differential duty as may be determined and put up on the department's website. The respondents have demanded a bank guarantee as a precondition to the release of goods, apparently to protect the interest of the revenue if any further amount is found due from the petitioner at the time of final adjudication. While considering the desirability of demanding a bank guarantee, a Division Bench held in Kuber Casting (P) Ltd. **Vs.** Union of India, 2013 (297) E.L.T. 4 (P & H) that the demand of a bank guarantee is not only harsh but squeezes the petitioner's business. We are in respectful agreement with this opinion but would point out that depending upon the facts of a case, the revenue may legitimately demand a bank guarantee; the relevant facts being a bona fide apprehension that the assessee may not discharge its liability, the assessee may not be traceable or such other circumstance as may relevant. The condition of a bank guarantee should, however, not be imposed mechanically or as to tool to pressurize an assessee.

A due consideration of the facts of this case reveals that the appellant has paid ₹30 lacs and undertaken to deposit the differential duty. The respondents have not pointed out any circumstance that may raise an apprehension that the appellant will not discharge liability qua

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any amount that may be assessed at the time of final adjudication. The petitioner has agreed to furnish a bond/personal guarantee/undertaking to discharge this liability. Consequently, we quash the condition requiring the assessee to furnish a bank guarantee and direct the petitioner to pay the differential duty as determined and to furnish a personal bond as well as an undertaking that in the eventuality of any other amount being found due, it would discharge its liability without any protest or demure subject however, to its right to file an appeal. The goods if not released, be released within 48 hours of the petitioner complying with this order.

(RAJIVE BHALLA)
JUDGE

January 23, 2015.
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(B.S. WALIA)
JUDGE

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