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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 3347/2015

ABAN EXIM PVT. LTD. ..... Petitioner

Through: Mr. Priyadarshi Manish and Mr. Rahul Ranjan, Advs.

versus

PRINCIPAL COMMISSIONER OF CUSTOMS AND ORS. ..... Respondents

Through: Mr. Kamal Nijhawan, Sr. Standing Counsel for Mr. Sumit Gaur, Advs.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

% **22.04.2015**

1. Mr. Nijhawan has reverted with instructions. He says that the calculation with regard to condition No.2 (ii), which relates to execution of bank guarantee in the sum of Rs.77,70,795/- for provisional release of goods in issue has been arrived at, in the following manner :-

Assessable value of the goods arrived as suggested in SCN (Rs.)	Value declared by the party as SCN (Rs.)	Extent of under-valuation (Rs.)	Differential Duty leviable @ 28.852% approx. (Rs.)
2,71,56,454/-	1,17,65,999/-	1,53,90,455	44,40,454/-

2. Mr. Manish, learned counsel for the petitioner, says that the petitioner is willing to furnish a bank guarantee equivalent to 30% of the differential value of the duty calculated by the respondent.

3. As is obvious from the calculations supplied by the counsel for the respondent, which are noted hereinabove, differential duty leviable is a sum of Rs.44,40,454/-.

3.1 Therefore, if the submission of the petitioner is accepted then the bank guarantee amount equivalent to 30% of the said amount, i.e. Rs.44,40,454/- will have to be furnished by it.

4. Mr. Nijhawan does not dispute the fact that a Division Bench of this Court in ***Zest Aviation Pvt. Ltd. v. Union of India, 2013(289) ELT 243 (Del.)*** has, following the decision of the Supreme Court in the case of ***Commissioner Vs. Navshakti Industries Ltd.***, directed provisional release of the subject goods in that case (which incidentally was an Aircraft) based on the condition that security in the form of bank guarantee equivalent to 30% of the differential duty be furnished.

4.1 In the present case, it is noticed that by virtue of the impugned order the value of bank guarantee stipulated is Rs.77,70,795/- which is 1.75 times the differential rate of duty. This condition is clearly onerous and burdensome when seen in the light of the conclusions arrived at in the two cases referred to above.

5. Accordingly, in these circumstances, the order dated 5.1.2015 is modified to the limited extent that condition No.2(ii) will now provide for an obligation on the part of the petitioner to furnish a bank guarantee in the sum equivalent to 30% of the differential duty, which is a sum of Rs.44,40,454/-, as per the calculation supplied by Mr. Nijhawan.

6. All other conditions in the order dated 2.1.2015 shall remain unaltered, including the condition that the bank guarantee will contain an

auto-renewal clause.

7. On the petitioner fulfilling the conditions contained in the order dated 5.1.2015, as modified by this order, the goods in issue will be released provisionally to the petitioner.

8. The petition is disposed of.

9. Dasti.

RAJIV SHAKDHER, J

APRIL 22, 2015

s.pal