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

% Judgment delivered on: 16.04.2015

+ W.P.(C) 3500/2015 & CM 6260/2015

NEELAM IMPORTS .... Petitioner

versus

UNION OF INDIA AND ORS .... Respondents

Advocates who appeared in this case:

For the Petitioner	: Mr S. Ganesh, Sr Advocate with Mr G. S. Arora and Mr D. S. Arora
For the Respondent No.1	: Mr Vivek Goyal
For the Respondent No.2	: Mr Satish Aggarwala
For the Respondent No.3	: Mr Satish Kumar

AND

+ W.P.(C) 3616/2015 & CM 6454/2015

SAMRIDHI OVERSEAS .... Petitioner

versus

UNION OF INDIA & ORS .... Respondents

Advocates who appeared in this case:

For the Petitioner	: Mr S. Ganesh, Sr Advocate with Mr G. S. Arora and Mr D. S. Arora
For the Respondent No.1	: Mr Vikas Mahajan with Mr S. S.Rai and Mr Rohan Gupta
For the Respondent No.2	: Mr Satish Aggarwala
For the Respondent No.3	: Mr Satish Kumar

CORAM:
HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

1. These writ petitions raise identical issues and, therefore, they are being disposed of together. We have heard the learned counsel for the parties. The main issue involved in these writ petitions is with regard to the question of provisional release of the goods which are essentially LED lights and Christmas lights. In both these cases, the goods were imported by the petitioners, who were the Import Export Code (IEC) holders and the petitioners had also filed the bills of entry. The goods have been detained by the customs authority on the ground that the goods belong to one Mr Amarnath Jindal and that the petitioners allegedly have an agreement with him for which they get a fixed amount for the imports. The sum and substance of the allegation is that the imports are being made by the said Mr Amarnath Jindal using the Import Export Code (IEC) of the petitioners. It is for this reason that the respondents contend that the goods are prohibited.

2. On the other hand Mr Ganesh, the learned senior counsel appearing on behalf of the petitioners, submits that the goods are not in the category of 'prohibited goods'. They are freely importable on payment of customs duty.

Whatever customs duty is payable, the petitioners are ready and willing to pay the same. In fact, there is no controversy on the amount of the duty payable on the said subject import. He further submits that the goods have been imported by the petitioners, who have filed the bills of entry and they are the owners of the goods. He further submits that even if they are not the owners of the goods, there is nothing to prohibit the import of the said goods. He placed reliance on the judgment of the Kerala High Court in the case of ***Proprietor, Carmel Exports and Imports v. CC, Cochin*: 2012 (26) ELT 505.** The relevant portion of the said judgment is as under:-

> "15. Coming to the submission that the appellant is only a "name lender" for the import of goods by one Anwar, we shall presume for the time being that the appellant is only a name lender, but the actual beneficiary of the import is one Anwar. We called upon learned counsel for the respondents to place the relevant provision which prohibits such an activity on the part of an Import Export Code Number holder. Learned counsel for the respondents categorically made a statement that he is not able to place any such prohibition in law except Section 7 of the Foreign Trade (Development and Regulation) Act, 1992, which reads as follows :-
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> > 7. Importer-exporter Code Number. - No person shall make any import or export except under an Importer-exporter Code Number granted, by the Director General or the officer authorised by the Director General in this behalf, in accordance with the procedure specified in this behalf by the Director General".
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> The expression "import" occurring in the said section means bringing into India of goods as defined under Section 2(e). There is

> nothing in the law which requires an importer to be either the consumer or even the buyer of the goods also. Even otherwise, we are of the opinion that it is a matter of common sense that no importer would consume all the materials imported. Necessarily, the goods imported are meant for sale to the consumer, in which case, if an importer, who enjoys the facility of I.E. Code imports certain goods in the normal course of business on the strength of a contract entered by such importer with either a consumer or a trader who eventually sells the imported goods to consumers. We do not understand what can be the legal objection for such a transaction especially where the import of such goods is otherwise not prohibited by law…….”

3. He also placed reliance on a decision of the Bombay High Court in the case of ***Hamid Fahim Ansari v. CC Imports, Nava Sheva**: 2009 (241) ELT 168*. The relevant portion of the said judgment is as under:-

> “5. ……imports have been done in the name of the petitioner but for some other person. In so far as respondents/Customs Authorities is concerned, they have not pointed out to us any provision under the Customs Act or any Rule or Regulation framed thereunder by which the person having valid IEC Number and having paid the custom duty is prevented from importing goods. At the highest, if the petitioner has obtained IEC number by misrepresenting the Ministry of Commerce and Industry and Director General of Foreign Trade, it is for that body to take action.
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> 6. In these circumstances, in our opinion, petitioner having paid the custom duty is entitled to release of the goods…...”

4. The learned counsel for the respondents placed reliance on the judgment of a Division Bench of this Court in the case of ***Commissioner of***

Customs & Central Excise v. Achiever International: 2012 (286) ELT 180. We have gone through the said judgment. The facts of that case are entirely different to those of the present case. They also place reliance on the decision of the Madras High Court in the case of ***First Track Traders v. Commissioner of Customs, Tuticorin: 2012 (281) ELT 23 (Madras)***. First of all, that decision has been rendered by a learned Single Judge of the High Court of Madras, Madurai Bench. In any event, we are unable to understand as to how that judgment would be applicable to the facts of the present case. The only point referred to by the learned counsel for the respondents was with regard to the statement made under Section 108 of the Customs Act, 1962. In the present case such a statement was made, but the same has been retracted. In that case, the statement had not yet been retracted and the learned Single Judge held that unless the statement was retracted, the same would be taken into evidence. The situation is entirely different in the present case. Therefore, that case also has no applicability, even for persuasive value.

5. In view of the foregoing, we see no reason as to why the provisional clearance should not be granted by the customs authorities in respect of the goods which are the subject matter of the present petitions. We direct the

Commissioner of Customs, ICD, Tughlakabad, New Delhi to provisionally clear the said goods, subject to the conditions that he may impose in accordance with law. The respondents shall also consider the petitioners' applications for detention certificates.

The writ petitions are allowed as above. There shall be no order as to costs.

BADAR DURREZ AHMED, J

APRIL 16, 2015 **SANJEEV SACHDEVA, J**
SR