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

+ **W.P.(C) 4202/2015**

M/S S.S. AUTOMOTIVE PVT. LTD. Petitioner
Through: Mr V.V. Gautam, Adv.

versus

**ADDITIONAL COMMISSIONER, CUSTOM
(EXPORT SHED), ICD, TKD** Respondent
Through: Mr Kamal Nijhawan & Mr Sumit Gaur,
Adv.

**CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER**

ORDER

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28.04.2015

CM No. 7606/2015 (Exemption)

1. Allowed subject to just exceptions.

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2. There are two grievances of the petitioner articulated in the present petition. First, that the bank guarantee in the sum of Rs. 1 crore furnished as a condition for provisional release of goods has not been returned, though export proceeds have been received and the duty draw-back claimed by the petitioner, along with interest, has been returned as directed by the respondents.

2.1 Second, that the show cause notice dated 05.11.2013, issued to the petitioner, alleging over-valuation of the goods exported, has not been adjudicated upon to date, even though an interim reply to the said show cause notice was filed, as far back as on 08.08.2014.

3. It may be noted that the petitioner claims that it is in the business of

export of various horticulture and agriculture machinery parts, and that, this business is being carried out since 2002.

3.1 The petitioner, on obtaining an order, sought to export the machinery parts relating to horticulture and agriculture in pursuance of a purchase order dated 08.08.2012. It is the petitioner's case that the goods sought to be exported, were examined by the officers of the customs, and thereafter were having been found in order, an export order was issued in its favour by the competent officer. This exercise, according to the petitioner, was carried out between 3.04.2013 and 04.04.2013.

3.2 Apparently, the goods were, once again, examined on 15.04.2013. The petitioner was also directed to produce documents pertaining to the goods in issue including the documents pertaining to cost of production, purchase of invoices etc. The petitioner avers that some documents were submitted under a cover of the letter dated 30.04.2013 as well.

3.3 Initially, the respondent, it appears, permitted provisional release of the goods sought to be exported vide communication dated 29.05.2013 on fulfilment of conditions contained therein, which inter alia, required the petitioner to execute a bond in the sum of Rs. 11,08,87,611/-, along with a bank guarantee in the sum of Rs. 1 crore.

3.4 The petitioner says that the said conditions were fulfilled and consequently goods were allowed to be exported. It is the petitioner's case that proceeds in the sum of USD 20,55,310.23/- have been received. Bank realization certificates dated 30.08.2013 to 01.10.2013 are relied upon for this purpose.

3.5 It appears the petitioner received duty draw-bank, on account of its export, in the sum of Rs. 18,41,469/-. Evidently, since the respondent vide

order dated 24.06.2013 required the petitioner to deposit the duty draw-back amount, the said sum, along with interest, was deposited by the petitioner in the designated account on 06.07.2013.

3.6 Evidently, a search was conducted on the petitioner's office premises on 08.07.2013. It is the case of the petitioner, no incriminating documents were found. It is also admitted that the department requisitioned a report of a chartered engineer, namely, one Mr Naveen Arora, dated 17.04.2013, which details out the valuation of the goods exported. The respondent has also received quotation from, one, M/s Prime Spares Co.. This quotation is dated 18.04.2013.

3.7 The statement of the director of the petitioner, under Section 108 of the Customs Act, 1962 has also been recorded. This statement was recorded, evidently, on 18.07.2013.

4. Consequent thereto a show cause notice dated 05.11.2013 was issued to the petitioner, to which, as indicated, a reply dated 08.08.2014 has been filed by the petitioner. It is in these circumstances, the captioned writ petition has been filed.

5. Having regard to the averments made in the petition, it is clear that the respondent needs to quickly close the proceedings and adjudicate upon the show cause notice dated 05.11.2013. The petitioner's contention that the bank guarantee has served its purpose, has some merit.

6. In these circumstances, the respondent is directed to adjudicate upon the show cause notice as expeditiously as possible, though not later than four weeks from today. While doing so, the concerned authority will also take a decision on the plea with regard to release of the bank guarantee in issue.

7. Learned counsel for the petitioner says that an interim reply was filed

to the show cause notice dated 05.11.2013, as relied upon documents were not furnished by the respondent. Accordingly, the respondent will furnish all documents to the petitioner if, a request is made in that behalf. After documents are supplied, if filing of an additional reply is necessitated, an opportunity for that purpose will be given to the petitioner. The petitioner will be heard before an order is passed qua the show cause notice dated 05.11.2013.

8. The writ petition is, accordingly, disposed of with the aforesaid directions.

9. Dasti under the signatures of the Court Master.

RAJIV SHAKDHER, J

APRIL 28, 2015

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