

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

% **Reserved on: 02nd September, 2015**
Date of Decision: 17th September, 2015

+ W.P.(C) 4152/2015

GURDEEP KAUR Petitioner
Through: Dr. Ashutosh, Advocate.

versus

COMMISSIONER OF CUSTOMS (PREVENTIVE) Respondent
Through: Mr. Kamal Nijhawan, Sr.
Standing Counsel with Mr.
Dinesh Podar, Superintendent.

CORAM:
HON'BLE MR. JUSTICE VED PRAKASH VAISH

JUDGMENT

1. By way of present petition, the petitioner assails order dated 06.04.2015 passed by Assistant Commissioner, Customs Preventive (Alpha Group), New Delhi whereby the consignment of the petitioner was provisionally released subject to execution of bond for re-determined value of the imported goods i.e. Rs.54,48,608/- (Rupees Fifty four lakhs forty eight thousand six hundred eight) supported with cash deposit of differential duty of Rs.10,00,000/- (Rupees Ten lakhs) and bank guarantee of Rs.8,00,000/- (Rupees eight lakhs) with auto renewal clause.

2. Shorn off unnecessary details, the facts of the present case are that vide panchnama dated 11-12.02.2015, the concerned seizing

officer seized the consignment of goods imported by the petitioner namely auto motor parts under Bill of Entry No. 8242439 dated 09.02.2015 and MAWB No. 176-7496-6124 bearing an assessable value of Rs.3,18,125.44 under Section 110 of the Customs Act, 1962, on the allegations that the value and description of those goods were concealed and mis-declared and further that excess goods were found in the consignment. Vide letter dated 03.03.2015 addressed to the Joint Commissioner of Customs (Prev.), the petitioner asked for release of the goods. Again vide another communication dated 08.03.2015 addressed to the Commission of Customs (Prev.), with its copy to the Chief Commissioner of Customs (Prev.), the petitioner once again requested the respondent for the provisional release of her goods while complaining about the behavior of an official of the department. The petitioner sent another letter dated 25.03.2015, to the Chief Commissioner of Customs (Prev.). On 01.04.2015 yet another letter was handed over which was replied to vide impugned order/letter dated 06.04.2015 by the Assistant Commissioner, Customs Preventive (Alpha Group) of the respondent. In terms of the order dated 06.04.2015, the value of the petitioner's goods were re-determined at Rs. 54,48,608/- supported with cash deposit of differential duty of Rs.10,00,000/- and bank guarantee of Rs.8,00,000/- with automatic renewal clause as per prescribed format.

3. Learned counsel for the petitioner contended that the value of goods, ordered to be released provisionally, is less than Rs.4,00,000/-, but, with a view to deny the provisional release, deliberately those goods have been evaluated at Rs.54,48,608/-, without disclosing as to

how the department has reached at that value. It is contended that in the absence of any reasoned order, the said valuation of the goods amounting to Rs.54,48,608/-, while rejecting the transaction value and while ignoring the earlier and contemporary import of similar goods, is not only contrary to the Valuation Rules under the Customs Act, 1962, but also contrary to the facts of the case. The abovementioned conduct of the department in putting such unreasonable onerous conditions for provisional release of the goods clearly reflects mala-fide of its officials. The apprehension/allegations of the department qua the goods in question being counterfeit in nature is an afterthought and such a submission is being made by the department with a view to harass and humiliate the petitioner due to ulterior motives.

4. It was lastly contended by the learned counsel for the petitioner that in case the goods are not released to the petitioner immediately they would deteriorate in quality and would lose their marketability.

5. *Per Contra*, learned senior standing counsel for the respondent contended that a writ in the nature of certiorari is not maintainable in the facts and circumstances of the case. The petitioner's consignment was examined on 11-12.02.2015 at Air Cargo Unit, IGI Airport, New Delhi in the presence of Mr. Hemant Kumar Jha, representative of CHA and it was found that the imported goods were branded auto parts for vehicles such as BMW, Mercedes, Toyota etc., whereas no Brand, Model was declared by the petitioner in the Bill of Entry No. 8242439 dated 09.02.2015 vide supplier Invoice No. 3353 dated 04.02.2015. A large quantity of auto parts were found in excess of the quantity declared by the petitioner in the Bill of Entry as per details in

panchnama dated 12.02.2015 and as such the same were seized under Section 110 of the Customs Act, 1962. To arrive at the value of the imported shipment, the petitioner was summoned on 27.02.2015, 05.03.2015, 31.03.2015 and 13.04.2015 in order to provide the requisite information, however, no records have been furnished till date. In the absence of proper records/documents which should have been provided by the petitioner, the provisional value and differential provisional duty of the goods was arrived as per laid down procedures in such cases and the petitioner was informed of the same vide letter dated 06.04.2015 issued under provisions of Section 110 A of the Customs Act, 1962.

6. Learned senior standing counsel for the respondent further contended that the petitioner has not provided the records and is not cooperating in the investigation neither in respect of the present shipment nor in respect of the past shipments. The goods are not perishable but costly parts of luxury cars such as Mercedes, BMW and Toyota etc. The representative of Mercedes Benz India Pvt. Ltd. inspected the samples of spare parts and out of seven samples they found five parts genuine and two parts as counterfeit violating the Intellectual Property Rights of Mercedes Benz India. The goods in question were not seized for IPR violation but were seized for mis-declaration of quantity and brands as per Panchnama dated 12.02.2015 and the IPR angle came into play at a very later stage. Since the matter is *sub judice* before this Court, therefore, the order dated 06.04.2015 was not put on hold/withdrawn or revoked.

7. It was lastly contended by the learned senior standing counsel that as regards the dispute put forth by the petitioner regarding valuation of the imported goods, the final value is being arrived at under the provisions of the Customs Act, 1962 and a show cause notice will be issued shortly.

8. I have bestowed my thoughtful consideration to the submissions made by learned counsel for the parties and have also perused the material on record.

9. Before examining the merits of the present case, it is necessary to consider the relevant provisions of Section 128 of the Customs Act, 1962 which reads as under:-

“128. Appeals to Commissioner (Appeals)

(1) Any person aggrieved by any decision or order passed under this Act by an officer of customs lower in rank than a Principal Commissioner of Customs or Commissioner of Customs may appeal to the Commissioner (Appeals) within sixty days from the date of the communication to him of such decision or order:

Provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days.

(1A) The Commissioner (Appeals) may, if sufficient cause is shown at any stage of hearing of an appeal, grant time, from time to time, to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing:

Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.

(2) Every appeal under this section shall be in such form and shall be verified in such manner as may be specified by rules made in this behalf.”

10. On a bare perusal of Section 128 of Customs Act it is manifestly clear that an appeal lies in respect of any ‘decision or order passed under the Customs Act’. In my view the impugned order falls within the description of ‘order or decision’ with respect to provisional clearance. Further, the impugned order dated 06.04.2015 has been passed by the Assistant Commissioner, Customs Preventive (Alpha Group) which is lower in rank than a Principal Commissioner of Customs or Commissioner of Customs. No exceptional or extraordinary circumstances have also been brought on record before this Court to permit it to invoke its extraordinary jurisdiction under Article 226 of the Constitution of India. Therefore, this Court is of the opinion that in terms of Section 128 of the Customs Act, 1962 the appeal against the impugned order dated 06.04.2015 shall lie to the Commissioner of Appeals within sixty days from the date of its communication to him.

11. For the reasons recorded aforesaid, I am not inclined to entertain the present writ petition. Considering the fact that the petitioner has approached this Court under the mistaken view that remedy of appeal is not available under the Customs Act, 1962, this Court is of the opinion that the petitioner may prefer an appeal before the concerned appropriate authority within four weeks from today, which shall be

decided expeditiously and preferably within a period of six weeks from the date of filing of appeal.

12. In view of the above the petition stands disposed of.

(VED PRAKASH VAISH)
JUDGE

SEPTEMBER 17th, 2015
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