IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3341 OF 2016

M/s.Tesla Décor. ...Petitioner

*Versus*

1.Union of India & Ors. ...Respondents

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*Mr.Sujay Kantawala with Mr.Brijesh Pathak & Mr.Yogesh Rohira, for the Petitioner.*

*Mr.Pradeep S. Jetly, for the Respondents.*

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CORAM : S.C. DHARMADHIKARI &
G.S. KULKARNI, JJ.

DATED : 4th APRIL,2016

**P.C.**:

1. After having heard Mr.Kantawala, learned Counsel appearing for the Petitioner and Mr.Jetly, learned Counsel appearing for the Respondents and perusing with their assistance the petition, affidavit in reply, the civil application as also the affidavit-in-reply thereto, we are of the opinion that with an appropriate clarification and by keeping all issues open, the Writ Petition can be disposed of.

2. The essential relief prayed is to release certain consignments

which are now seized. A provisional order has also been passed on 15th March,2016 pursuant to this Court's directions.

3. The grievance is that this provisional order finally adjudicates the controversy and now there is nothing for determination by the Competent Authority. Even when the show cause notices are not issued, such conditions are imposed as would enable illegal recoveries. Meaning thereby, if export duty is not chargeable in law, even that is sought to be recovered in an indirect and oblique manner. Our attention is invited to the recommendations of the Directorate of Revenue Intelligence to the Appellate Authority and the conditional provisional assessment order. It is submitted by Mr.Kantawala that this imposition is unreasonable and excessive so also arbitrary. The conditions imposed for payment of duties and as quantified by the DRI- the Investigating Agency, are ex-facie illegal.

4. On the other hand, Mr.Jetly seeks to justify this entire exercise by pointing out that a fraud on the public is perpetrated and is continued in the sense that some persons and dealing in carpets tried to take them out of India in the garb of confirmed export orders. However, the pattern now revealed is that there are certain persons operating from

Dubai who through their front-men allow import of these goods or similar goods from Dubai. They are received in India and against the Drawback scheme. Thereafter, certain confirmed export orders are obtained and there is evasion of duty. The statements have been recorded and this would reveal as to how in the garb of certain shipping bills and related export invoices but without supporting material such as lorry receipts / consignment notes relating to transport of goods from place of purchase to board/container freight stations are absent. Despite summons being issued, they have not been produced. Thus, some of the documents could not establish correlation and some of those produced appear to be fabricated and not genuine.

5. It is in these circumstances that the Directorate of Revenue Intelligence's recommendations may not bind the Authorities but based on the seizure effected and the version of the Investigating Agency, a conditional prima facie provisional assessment can be made and that is reasonable and not arbitrary, as complained. The petition raises disputed questions of fact and must be dismissed.

6. After having heard both sides on the limited issue of release of seized goods provisionally and without prejudice to the rights and

contentions of both sides, we direct that on deposit of Rs.25,00,000/- (Rupees Twenty Five lakhs only) in cash within fifteen days as suggested and on furnishing a bank guarantee in the sum of Rs.30,00,000/- (Rupees Thirty lakhs only), both within two weeks from today, the seized goods shall be released. The seizure as also the release is without prejudice to the rights and contentions of all the parties. Merely because a direction is issued to release the Petitioner's goods, does not mean that the Revenue is restrained from issuing a show cause notice and passing an order of adjudication in furtherance thereof. The adjudication proceedings can be initiated and concluded on their own merits and in accordance with law, uninfluenced by any provisional release order. We expect that the Revenue would do that expeditiously for it has claimed to have unearthed a huge fraud perpetrated on public.

7. Let the Petitioner comply with these statements and which we have accepted without prejudice to the rights and contentions of the parties and thereafter, the Additional Commissioner of Customs, Drawback Department, Nhava Sheva, Mumbai, shall take appropriate steps and unlock the IEC number as prayed in the Petitioner's application dated 4$^{th}$ March,2016.

8. This order has been passed upon the suggestion of Mr.Kantawala, learned Counsel appearing for the Petitioner and which are also made on instructions.

[G.S. KULKARNI, J.] [S.C.DHARMADHIKARI, J.]