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* IN THE HIGH COURT OF DELHI AT NEW DELHI
22.
\+ W.P.(C) 1567/2016

G.S. NUTS THROUGH ITS PROPRIETOR GOPAL SHARMA ....Petitioner
Through: Mr. Pradeep Jain with Mr. Shubhankar Jha, Advocates.

versus

COMMISSIONER OF CUSTOMS, INLAND CONTAINER DEPOT & ANR. ..... Respondents
Through: Mr. Kamal Nijhawan, Senior Standing Counsel.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE VIBHU BAKHRU

O R D E R
% **23.02.2016**

CM No. 6783/2016 (for exemption)

1. Exemption allowed subject to all just exceptions.

2. The application is disposed of.

W.P.(C) 1567/2016 & CM No. 6782/2016 (for interim relief)

3. Notice. Mr. Kamal Nijhawan, learned counsel for the Respondents accepts notice.

4. The Petitioner has imported the goods namely Areca Nuts from Sri Lanka

by bill of entry Nos. 4201613 and 4201583 both dated 9th February 2016. In terms of the India-Sri Lanka Free Trade Agreement ('ISFTA') the Petitioner enjoyed exemption from customs duty and Notification No. 43/2003-Customs (read with Notification No. 26/2000-Customs, dated 1st March 2000) has been issued on 18th March 2003 to that effect.

5. An alert was issued by the Customs Authorities at Inland Container Depot, Tughlakabad ('ICDT') by a Circular No. 34/2015-CI dated 29th December 2015 in which, *inter alia,* the need for exercise of due diligence while examining certificate of origin relating to imports from Sri Lanka and other partner FTA countries has been emphasised. However, while doing so, the Circular also insisted that "where evidence comes forth to show that the imports are from third country action may be taken as per law. In other cases, the imports may be provisionally assessed and a bank guarantee equivalent to the differential duty obtained for securing revenue".

6. It is the above portion of the Circular that the Petitioner is aggrieved by. The Petitioner's request for release of the goods on provisional assessment has been responded to by a letter dated 19th February 2016 requiring the Petitioner to furnish 100% bank guarantee for the duty element. According to the Petitioner, it is yet to receive any such intimation from the Respondents. However the Petitioner has been informed that in terms of the Circular it would have to furnish a bank guarantee for 100% of the duty element.

7. In a similar context in Writ Petition (C) No. 5833/2015 (***Spirotech Heat***

Exchangers Pvt. Ltd. v. Union of India), the Court interfered with an order of provisional release issued by the Deputy Commissioner of Customs, ICDT which insisted on 100% demand of differential duty, execution of a bond in a sum equal to 100% of the value of the goods and a bank guarantee for a sum equivalent to 25% of the differential duty. The Court referred to the decision in ***Navshakti Industries Pvt. Ltd. v. Commissioner of Customs, ICD, TKD, New Delhi (2011) 267 ELT 483 (Del)*** modified by the Supreme Court in ***Commissioner v. Navshakti Industries Pvt. Ltd. 2011 (269) ELT A146 (SC)*** and directed that the goods should be provisionally released subject to the Petitioner executing a bond in a sum equal to 100% of the value of the goods and furnishing a bank guarantee for a sum equivalent to 30% of the differential duty, with an auto renewal clause and as per RBI guidelines.

8. The Court here observes in relation to the alert Circular No. 34/2015 dated 29/30th December 2015, that, to the extent that it curtails discretion of the quasi judicial authority exercising powers under the Customs Act, 1962 to order provisional release of goods subject to conditions, it cannot be sustained in law. In other words, it is not open to the Directorate of Revenue Intelligence ('DRI') to issue a circular to insist that in all cases of provisional release, the quasi judicial authority considering such request must impose a condition of providing a bank guarantee equivalent to differential duty. To that extent the alert Circular dated 29/30th December 2015 is directed not to be given effect to.

9. As far as the present case is concerned, following the aforementioned

order of the Court, it is directed that the provisional release of the goods will be allowed in favour of the Petitioner subject to the Petitioner executing a bond for a sum equivalent to the 100% of the value of goods and furnishing a security in the form of a bank guarantee for a sum equivalent to 30% of the differential duty, with an auto renewal clause and as per RBI guidelines.

10. The petition and the application are disposed of in the above terms.

11. A copy of this order be given *dasti* to learned counsel for the parties under the signature of Court Master.

S. MURALIDHAR, J

VIBHU BAKHRU, J

FEBRUARY 23, 2016/dn