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

\+ W.P.(C) 3781/2013

VJ TRADERS ..... Petitioner

Through: Mr.Priyadarshi Manish and Ms.Anjali J.Manish, Advocates

versus

UNION OF INDIA & ORS. ..... Respondents

Through: Mr.Anuj Aggarwal, Adv. for R-1.
Mr.Pramod Kr.Rai, Sr.Standing Counsel and Mr.Deepak Anand, Jr.Standing Counsel for R-2 to R-4.
Mr.Arun Kumar, Adv. for R-5.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE DEEPA SHARMA

O R D E R

% **27.09.2016**

1. The petitioner's grievance in this proceeding under Article 226 of the Constitution is with respect to the claim by CONCOR, towards demurrage. The relevant facts are that the petitioner's imported goods – in two containers were detained. The consignment was of paint. Suspecting misdeclaration the customs authorities initiated proceedings; upon waiver of show cause notice, the goods were assessed and the differential duty to the extent of `18 lacs was demanded. This amount included a component of countervailing duty (CVD). The petitioner's appeal succeeded in part in the sense that final amount demanded was `3 lacs.

2. It is urged on behalf of the petitioner that given the circumstances of this case, the CONCOR should not insist upon payment of demurrage assessed at `35 lacs. It is contended that the ruling of this court in ***Trip Communication Private Limited. Vs. UOI,*** **2014 302 ELT 321** is inapplicable having regard to the difference in facts. Learned counsel relies upon the judgment of the Supreme Court in ***International Airport Authority of India vs. Grand Slam International and Others,*** **1995 (3) SCC 151**. It is submitted that having regard to the fact that CONCOR does not have a policy for waiver of demurrage, the observations in ***Trip Communication Private Limited*** (*supra*) would not apply.

3. It is argued on behalf of the respondents that especially by CÓNCOR, that 2/3rd of the demurrage charges calculated (i.e. out of `35,20,800/-) have been waived and the petitioner is required to pay `11,94,000/-. It is contended therefore that since the petitioner is the recipient of substantial benefit, its argument that in the absence of a policy CONCOR cannot insist upon deposit of demurrage is not substantial.

4. The decision in ***Trip Communication Private Limited***'s case (*supra*) made a distinction between one class of cases where after final adjudication, the importer is not found fault with on account of any misdeclaration or such like behaviour on the one hand and those instances where penalty and differential duty is imposed. This court is unpersuaded by petitioner's submission with respect to the

distinction sought to be urged i.e. absence of a policy. Rather the reasoning in ***Trip Communication Private Limited*'s** case (*supra*) was premised upon the nature of declaration. Having regard to these circumstances, we are of the opinion that this is not a case where the court should intervene in exercise of its jurisdiction under Article 226 of the Constitution.

5. The writ petition is accordingly dismissed.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

SEPTEMBER 27, 2016

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