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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 2861/2016

DAYA ENTERPRISES

..... Petitioner

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

versus

**THE COMMISSIONER OF CUSTOMS
(EXPORT)**

..... Respondent

Through: Mr Kamal Nijhawan, Senior Standing
counsel with Mr Sumit Gaur, Advocate.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE R. K. GAUBA

ORDER

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01.04.2016

1. Notice. Mr Kamal Nijhawan, learned Senior Standing counsel accepts notice.

2. The short question that arises in this writ petition is whether the conditions imposed by the order dated 11th March, 2016 by the Commissioner of Customs (Export) for provisional release of the goods in favour of the Petitioner is onerous.

3. Three conditions for provisional release as stipulated in the above order are (a) Execution of bond for an amount of Rs.1,65,49,893/- which is equivalent to the re-determined value of unbranded goods (b) payment of Rs. 50,42,172/- that is the total duty involved on the value re-determined as

above of unbranded seized goods or execution of Bank Guarantee equivalent to said amount with auto renewal clause (c) execution of Bank Guarantee of Rs.41,37,473/ which is equivalent to 25% of the re-determined value of seized goods for the purposes of securing fine and penalty, with auto renewal clause.

4. This Court had on earlier occasions dealt with similar issues by its order dated 5th February, 2016 in W.P.(C) No.5833/2015 (***Spirotech Heat Exchangers Pvt. Ltd. v. Union of India***). After noticing the earlier decisions of this Court as well as the Supreme Court in ***Navshakti Industries Pvt. Ltd. v. Commissioner of Customs, ICD, TDD, New Delhi (2011) 267 ELT 483 (Del)***, the Court in that case had modified the conditions imposed for provisional release of the goods.

5. In the present case, a preliminary objection has been raised by the Respondent that the Petitioner has an alternative remedy of an appeal against the order of the Commissioner granting provisional release of the goods. However, as was noticed in ***Spirotech Heat Exchangers Pvt. Ltd. v. Union of India*** (*supra*), since the Respondent does not appear to be inclined to follow the aforementioned orders and the binding order of the Supreme Court, and are compelling exporters and importers to approach this Court every time for relaxation of the conditions imposed for the provisional release of goods, the Court is of the view that relegating the Petitioner to a statutory remedy would not be efficacious.

6. Consequently, the conditions imposed in the order dated 11th March, 2016 passed by the Commissioner of Customs (Export) are modified and the Court directs the provisional release of the goods in question in favour of the Petitioner subject to the Petitioner executing a bond in the sum equivalent to 100% of the re-determined value of the goods and furnishing security in the form of bank guarantee for a sum equivalent to 30% of the differential duty, with an auto renewal clause and as per RBI guidelines.

7. All the rights and contentions of the parties are left open to be raised and decided in the adjudication proceedings.

8. The writ petition is disposed of with the above terms. Order *dasti* under the signature of the Court Master.

S. MURALIDHAR, J

R. K. GAUBA, J

APRIL 01, 2016

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