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

\+ W.P.(C) 3147/2016, CM APPL. 13484/2016

C CUBE CONSULTING PVT. LTD.

..... Petitioner

Through: Mrs. Anjali Jha Manish, Ms. Sunaina Pasricha and Mr. Sagar Rohatgi, Advs.

versus

UNION OF INDIA & ORS.

..... Respondent

Through: Mr. Anurag Ahluwalia, CGSC & Mr Sarfaraz Ahmad, G.P., for R-1/UOI.
Mr. Maninder Singh, Sr. Adv. with Mr. Ajit Sharma, Mr. Mayank Aggarwal, Advs. for DRI.
Mr. Maninder Singh, ASG, Mr. Ajit Sharma and Mr. Prabhas Bajaj, Advs. for R-1 & R-3.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE NAJMI WAZIRI

O R D E R

% 15.12.2016

The petitioner has sought release of its goods, i.e., HOP pellets used apparently for manufacturing of beer, imported at a declared value of 1.5 Euro per kg. Based upon the information received, the Customs authorities carried out search and seizure proceedings in three premises and detained the goods. At that stage, the petitioner sought intervention of the Court for release of the goods. The petitioner also contended that having regard to the perishable nature of the goods – since that had to be stored at a certain temperature; it was necessary that clear orders in this regard be made. This Court had, therefore, by an order dated 08.04.2016 directed the respondent authorities to ensure that the goods were kept in cold storage. The goods were, however, not transferred to the cold storage immediately but rather later on in two lots, the first on 29.04.2016 and the rest on the 3rd, 4th an 5th day of May, 2016. The delay was attributed to confusion on the part of the respondent as it was obliged to ensure transportation and storage in the cold storage warehouses and depots. The issue was complicated because the Customs authorities had made a statement/filed an affidavit in the Court and in the course of the proceedings the affidavit led to contempt notice to Customs officer(s) for non compliance of the order of 08.04.2016 and also for misleading the Court. As a consequence some officials were asked to present themselves in the Court through these proceedings. A direction too was issued to the concerned officer to file a detailed affidavit. The affidavit of the Joint Commissioner, Customs, Inland Container Depot, Patparganj, Delhi as well as Shri Dilip Chaudhary were therefore filed. The materials on record further show that a show cause notice was issued to the petitioner under Section 28(4) of the Customs Act, 1962; it inter alia alleges that the declared value is much less than the actual value of the goods, resulting in an attempt to evade duty. The Customs authorities have proposed recovery of amounts as well as other actions in accordance with law. Till date the petitioner does not appear to have responded to the show cause notice.

It is contended by Mrs. Anjali Jha Manish, the learned counsel for the petitioner that the material disclosed in the form of test report show prima facie that the delayed transportation and storage of the imported goods has resulted in significant losses on account of the reduced value of the goods and therefore their marketability. It is submitted that since the proceedings are pending in the Court, appropriate direction in the interest of justice, should be given. It is also stated that since these reports were directed to be placed on record under order in these proceedings, the petitioner is entitled to claim its remedies in respect of such losses.

The learned Additional Solicitor General who appears for the Revenue points to the affidavit of the respondent/custom authorities to dispute these losses and submits that this Court should refrain from intervening at this stage on account of pendency of adjudication proceedings. According to the Revenue, the petitioner had undervalued the goods – as against the real value of about 7 Euros per k.g. of the imported HOP pellets, the declared value was 1.5 Euro.

This Court is of the opinion that since the objective is ensuring that a procedure, in accordance with law is followed, it has been complied with though concededly not strictly in accordance with law and the order dated 08.04.2016 and other proceedings. The goods were warehoused in and cold stored on 29.04.2016 and on 4/5.5.2016, there has been substantial compliance of the direction.

As to the issue of undervaluation, it is quite apparent that the matter is subjudice before the Customs authorities and no order has yet been made. In fact, the petitioner does not appear to have replied to the allegations. In the circumstances, the question as to whether the petitioner has suffered losses on account of delay in compliance of the Court order obviously is academic. The actual value of the goods will be apparent – at least through Customs proceedings upon the order made by the adjudicating authorities concerned. The other method of course, will be ensuring of the release of the goods after the adjudication proceedings; its market value can be ascertained at the point of time it is sold. Either way, there is considerable fluidity in the matter and the Court cannot express its view in the matter, certainly not to the extent of assessing damages or compensation – which is the only relief that can be given at this stage.

In the circumstances, the Court is of the opinion that it is open to the petitioner to pursue its civil damages in accordance with law at its option either under before or after the completion of the adjudication proceedings' having regard to the ultimate price it recovers for the goods. The writ petition is therefore disposed-off in the above terms. The contempt notice is discharged.

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

DECEMBER 15, 2016/acm