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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 5243/2016

**HAPPY OVERSEAS THROUGH ITS
PROPRIETOR**

..... Petitioner

Through: Mr Umang Srivastava, Advocate.

versus

**COMMISSIONER, CUSTOMS EXPORT
COMMISSIONERATE**

..... Respondent

Through: Mr Kamal Nijhawan, Senior Standing
counsel with Mr Sumit Gaur and Mr R. Ashok,
Advocates.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE VIBHU BAKHRU

ORDER

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30.05.2016

CM No.21823/2016

1. Allowed, subject to all just exceptions.

W.P.(C) 5243/2016

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

3. The short point that arises for consideration in the present petition is whether the Respondent is justified in continuing to keep the Petitioner's bank account no. 404700CA00019719 with the Punjab National Bank having a sum of Rs.57,01,072/- frozen since 2007 despite the Petitioner having succeeded in its appeal before the Customs, Excise & Service Tax

Appellate Tribunal ('CESTAT') on 13th January, 2016?

4. In relation to the export of 57 consignments of readymade garments between October 2006 to July 2007, the Respondent initiated an investigation on 31st July, 2007 on the question of alleged fraudulent availment by the Petitioner of the central excise portion of the drawback incentives. Resultantly, the Petitioner's aforementioned bank account was frozen pending investigation.

5. The ensuing Show Cause Notice (SCN) dated 20th October, 2008 resulted in an Order-in-Original dated 28th May, 2013 passed by the Commissioner of Customs (Export) confirming the demand. However, the CESTAT by order dated 13th January, 2016 allowed the Petitioner's appeal against the aforementioned Order-in-Original.

6. The Petitioner thereafter approached the Respondent for de-freezing of its account but did not get any response.

7. Mr Kamal Nijhawan, learned Senior Standing counsel produced a copy of a letter dated 27th May 2016 written to him by the Deputy Commissioner (SIIB) which reveals that the Respondent is still in the process of taking a decision on filing an appeal against the order dated 13th January, 2016 passed by the CESTAT.

8. The Court finds that the Respondent is not justified in continuing to keep the Petitioner's account frozen for nearly five months after the Petitioner succeeded before the CESTAT. If the Respondent was keen that the

Petitioner's account should continue to remain frozen, it should have taken immediate steps to file an appeal.

9. In the circumstances, the Court directs that the Petitioner's account no.404700CA00019719 with the Punjab National Bank shall be de-frozen forthwith. The Petitioner is permitted to approach the Manager of the concerned branch of the Punjab National Bank, with a certified copy of this order, and the Manager will proceed to forthwith de-freeze the said account. This however, will not preclude the Respondent, if it chooses to file an appeal, from seeking appropriate interim orders in the concerned forum.

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

S.MURALIDHAR, J

VIBHU BAKHRU, J

MAY 30, 2016
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