$~13

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

\+ W.P. (C) 11560/2015

VIPUL OVERSEAS PVT. LTD. THROUGH: SH. SURINDER GARG, DIRECTOR. ..... Petitioner

Through: Mr. Ashish Bansal with Mr. Shubhankar Jha, Advocates.

versus

DIRECTORATE OF REVENUE INTELLIGENCE DELHI ZONAL UNIT & ANR. ..... Respondents

Through: Mr. Satish Aggarwala with Mr. Amish Aggarwala, Advocates for Resp-1.
Mr. Sanjiv Narula, Sr. Standing Counsel with Mr. Sunil Dalal and Mr.Abhishek Ghai, Advocates for Resp-2.

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

O R D E R

% **30.08.2016**

The petitioner's claim in this writ proceeding is for refund of the amount after adjusting the customs duty payable pursuant to the Order in Original.

The petitioner had imported paper. A show cause notice was issued in respect of 137 bills of entry alleging mis-declaration and demanding differential duty. The petitioner resisted the proceedings. During the pendency of adjudication proceedings, the petitioner had approached the Court in a writ. In the course of those proceedings, the Court had directed payment of certain amount; accordingly the petitioner deposited ₹43,93,374/-. The Commissioner by the Order in Original dated 14.10.2014 confirmed the show cause notice in respect of 12 bills of entry and rejected the other 125. The valuation in respect of 6 bills of entry were determined to be US$ 471 and in respect of the other US$350 per metric ton. The petitioner contends that the differential duty does not exceed ₹8 lakhs if the customs authorities were to give effect to TR-6 challans. Counsel contends that the amount standing to the petitioner's credit were to be given due consideration; the differential duty would be less than ₹9 lakhs.

The Order in Original in this case confirmed the differential duty in respect of 12 bills of entry. Besides it also imposed penalty upon one of the petitioner's Director Mr. Surinder Garg - to the extent of ₹10 lakhs. These essential facts are not denied. However, the respondents contend that their appeal is pending before the CESTAT and that the petitioner too has appealed against the fresh valuation in the course of the adjudication proceedings by the Commissioner. It is, therefore, submitted that in the circumstances and in the interest of justice to secure the interest of the Revenue, the respondents should be allowed to retain the amounts.

The above narration would show that though show cause notice was issued in respect of 137 bills of entry after due examination of all the materials, mis-declaration was determined in respect of only 12 bills. The demand was confirmed. According to the petitioner, the demands, if due credit is given to the TR-6 challans for the amounts duly deposited previously, cannot be in excess of ₹9 lakhs. The petitioner has also in addition conceded that the amount of penalty imposed upon its Director may be adjusted and the balance be refunded. The mere circumstance that the customs authorities had appealed to the CESTAT does not at this point of time render the retention of the money by them legitimate. Once the adjudication was completed and the true value determined, it is the differential duty which has to be deposited. That differential duty and no other amount can be recovered from the petitioner or even the deposit made by it. At the same time, since the petitioner has not disputed its Director's liability, the Court is of the opinion that even the amount of ₹10 lakhs cannot be claimed at this stage given that a concession to that effect is made in the prayer clause.

In the circumstances, the respondents are hereby directed to process the petitioner's refund and ensure that the excess amount after adjusting the differential duty (doing so after giving credit to the TR-6 challan amount deposited by the petitioner- after due verification) and further adjusting the penalty of ₹10 lakhs, repay/refund the balance within three weeks from today along with interest as admissible. The respondents shall pass a speaking order in this regard. The bank guarantees furnished by the petitioner pursuant to the Court's order during the pendency of adjudication shall also be discharged.

The writ petition is allowed in the above terms.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

AUGUST 30, 2016
/vikas/