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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 11852/2015 & CM APPL 31502/2015 (for stay)

LLOYD ELECTRIC & ENGINEERING LIMITED Petitioner
Through: Mr. M.P. Devnath with Mr. Yogendra
Aldak and Mr. Abhishek Anand, Advocates.

versus

UNION OF INDIA & ORS Respondents
Through: Ms. Rajdipa Behura, Advocate for R-
1.
Mr. Satish Kumar, Senior standing counsel for
R-2 to 5.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE VIBHU BAKHRU

ORDER

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15.01.2016

1. Notice. Ms. Rajdipa Behura and Mr. Satish Kumar, learned counsel accept notice on behalf of Respondent Nos. 1 and 2 to 5 respectively.
2. This writ petition under Article 226 of the Constitution of India challenges the order dated 27th March 2014 passed by the Deputy Commissioner of Customs, Inland Container Depot ('ICD'), Tughlakabad as far as demand of duty of Rs. 3,80,60,000, i.e., duty saved on account of advance licence No. 0510189870/2/03/00 dated 31st August 2006 and non-fulfilment of export obligation thereupon together with interest. A penalty of Rs. 19,00,000 was also imposed.
3. The Petitioner states that since it had not yet obtained an Export Obligation Discharge Certificate ('EODC') in respect of the above

advance licence, it requested the Commissioner of Customs, ICD at the personal hearing to grant extension of time till 15th March 2014 to submit the EODC. Meanwhile, on 24th March 2015 the Petitioner paid a sum of Rs. 1,56,96,781, i.e., Rs. 78,48,391 plus interest of Rs. 78,48,390 on the excess import of items. It is stated that the Petitioner received a letter dated 27th May 2015 from the Assistant Director General of Foreign Trade issuing EODC to the Petitioner. It is pointed that meanwhile, Respondent No. 3, Deputy Commissioner of Customs (SIIB) Branch, issued alerts for the export shipments of the Petitioner, in response to which the Petitioner executed a PD bond dated 26th September 2015 of Rs. 3,80,60,000 and also paid a penalty of Rs. 19,00,000 under protest. It is stated that the alert in the EDI system was still operative due to which Respondent No. 5, Assistant Commissioner of Customs (Export) Branch, was not allowing any of the exports of the Petitioner. Further, Respondent No. 4, Deputy Commissioner of Customs (Recovery) Branch, initiated recovery proceedings against the Petitioner.

4. In the similar instances where the exporter had received EODC on a date subsequent to the order passed by the Commissioner of Customs confirming the demand of duty and penalty, this Court remanded the matter back to the original Adjudicating Authority for a fresh determination after taking into consideration the EODC obtained by the exporter. A reference in this regard may be made to the orders dated 25th August 2015 in W.P (C) No. 7896 of 2015 (***Jonson Rubber Industries Limited v. Union of India***) and 12th January 2016 in W.P (C) No. 10031 of 2015 (***Lifelong India Private Limited v. Union of India***).

5. Accordingly, in view of the statement made by the Petitioner that it received the EODC for the advance licence in question on 27th May 2015,

the impugned order dated 27th March 2014 passed by the Deputy Commissioner of Customs, ICD, Tughlakabad is hereby set aside. The matter is remanded to the said authority for fresh determination after taking into account the EODC produced by the Petitioner. The consequential alerts in the EDI system cannot obviously continue as a result of the resent order by the Court.

6. It will be open to the Petitioner to make an application for refund of the duty or penalty paid by it under protest and such application when made that will be considered by the authority concerned in accordance with law expeditiously.

7. The writ petition and the pending application are disposed of in the above terms. Order be given *dasti* to the parties.

S.MURALIDHAR, J

VIBHU BAKHRU, J

JANUARY 15, 2016

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