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* IN THE HIGH COURT OF DELHI AT NEW DELHI
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\+ **W.P.(C) 639/2017**

AKS APPARELS ..... Petitioner
Through: Dr. G.K. Sarkar, Ms Malabika Sarkar and Mr Prashant Srivastava, Advocates

versus

COMMISSIONER OF CUSTOMS (EXPORTS) & ANR .... Respondents
Through: Mr Harpreet Singh, Senior Standing Counsel with Mr Suresh Chaudhary, Advocates for R-1
Mr Vivek Goyal, CGSC with Mr Harsh Pandit, Advocates for R-2

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE PRATHIBA M. SINGH

O R D E R
% **10.10.2017**

CM 35498/2017 (delay of 23 days in filing counter affidavit)

1.In view of the submissions made therein, the delay of 23 days in filing the counter affidavit is condoned. The application is disposed of.

W.P.(C) 639/2017

2.There are two grievances in the present writ petition filed by the AKS Apparels against the Commissioner of Customs (Exports) (Respondent No.1) and the Director General, Foreign Trade ('DGFT') (Respondent No.2). The first is that the Customs Department has frozen the Petitioner's bank account No. 420900CA00012680 with the Punjab National Bank ICD, TKD and has restrained the Petitioner from availing the duty drawback benefit in respect of its exports. The second is that consequent upon a communication of the Customs Department placing the shipping bills of Petitioner on an ‘alert’ list, the DGFT has stopped issuing ‘scrips’ to the Petitioner.

3. As far as the second grievance is concerned, it is now stated that during the pendency of the present petition, the DGFT has resumed issuing ‘scrips’ to the Petitioner. Therefore, the said grievance does not survive.

4. As far as the Customs Department is concerned, in the reply filed by it to the present petition, it is stated in paragraph 2 of the preliminary submissions that “the charges of freezing of Bank account, withholding of the Drawback amount and categorizing the Petitioner's Shipping Bills under 'alert', were done in the national interest so as to stop the fraud being played by the Petitioner.” It is further averred that since the investigation was at the final stage, as soon as the investigation is completed, “the status of the drawback will be cleared and SCN will be issued to the Petitioner”. A similar averment is made in the para-wise reply in paragraphs 32 and 34 of the counter affidavit. It is, *inter alia,* stated that, “This is a pre-emptive measure taken to safeguard the Government revenue.” Significantly, there is no mention of any provision of law by the Customs Department justifying the freezing of the Petitioner’s bank account.

5. It is now not in dispute that the investigation has been completed. Learned counsel for the Petitioner has placed before the Court a copy of the show cause notice (SCN) dated 14th August 2017*, inter alia,* requiring the Petitioner to show cause why the goods imported under 321 shipping bills should not be confiscated, the duty drawback wrongly availed and the

benefit availed under Focus Market licenses should not be recovered apart from interest, penalty etc. Learned counsel for the Petitioner points out that nowhere in the said SCN is any reference made to the fact that the Petitioner's bank account was frozen.

6. In any event, with the investigation having been completed and the SCN having been issued, the justification for continuing with the freezing of the bank account of the Petitioner does not survive.

7. In that view of the matter, the Court directs that the Petitioner's Bank Account No. 420900CA00012680 with the Punjab National Bank ICD, TKD shall stand de-frozen forthwith and appropriate instructions will be issued by the Customs Department to the aforementioned bank immediately to enable the Petitioner to operate the said bank account.

8. It is further directed that if such instruction is not issued on or before 15th October 2017, the General Manager of the Punjab National Bank ICD TKD will, on the strength of this order, permit the Petitioner to operate its account No. 420900CA00012680.

9. The writ petition is disposed of in above terms.

10. A copy of this order be given *dasti* under the signatures of the Court Master to the parties.

S.MURALIDHAR, J.

PRATHIBA M. SINGH, J.

OCTOBER 10, 2017/*rd*