IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 809 OF 2018

M/s. Faqir Chand Vinod Kumar and Co.	}	Petitioner
versus		
The Union of India and Anr.	}	Respondents

Mr. Anil Balani for the petitioner.

Mr. Prakash Shah with Mr. Pradeep S. Jetly for Union of India.

CORAM :- S. C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.

DATE :- JANUARY 29, 2018

P.C. :-

1. The writ petition is filed with the following two prayers:-

> "a) that this Hon'ble Court be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction calling for the records and proceedings in respect of Bill of Entry No. 4152457 dated 25.11.2017 and after considering the propriety and validity of the impugned decisions of the Respondents, be pleased to quash and set aside the same;
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> b) that a writ of mandamus be issued to the Respondents to restore the original assessment at 'NIL' rate of duty in terms of notification 50/2017-Cus. Dated 30.6.2017 and quashing the fresh assessment levying 30% duty in terms of new Notification dated 21.12.2017;"

2. After the writ petition was filed on 17th January, 2018, the contesting respondents have placed on record an affidavit. Upon perusal of the writ petition and this affidavit, we are of the view

that there is a dispute on facts. Whether a bill of entry was assessed prior to a notification being made known to the public or as contended by the respondents, the case is covered by that notification, which was duly published is a matter which cannot be resolved in writ jurisdiction. More so, when now the petitioner's advocate concedes that the petitioner is in receipt of a show cause notice from the respondents, which would be duly adjudicated in accordance with law.

3. The argument is that bearing in mind the nature of the goods, we should allow clearance and with appropriate conditions being imposed on the petitioner. The petitioner agrees to abide by such conditions for provisional clearance of the goods as may be imposed by this court.

4. After hearing the counsel on this point, we are of the view that interest of justice would be served and rights and equities can be balanced by the following order:-

> (i) On the petitioner depositing with the respondents 50% of the duty amount in cash and securing the rest by a bank guarantee of a nationalised bank, which shall be kept alive till the adjudication proceedings are concluded and three months thereafter, the respondents shall provisionally release the goods.
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> (ii) The petitioner shall also furnish a bond equivalent to the value of the goods.
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> (iii) On both conditions being satisfied, there will be a provisional release of the goods and this action of the respondents would be without prejudice to the rights and contentions of both parties.

5. With the aforesaid directions, the writ petition is disposed of. We clarify that we have not expressed any opinion on the rival contentions.

(SMT. BHARATI H. DANGRE, J.) **(S.C.DHARMADHIKARI, J.)**