In the High Court of Judicature at Madras

Dated : 16.4.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.3078 of 2018 & WMP.No.3766 of 2018

M/s.Kanpur Trading Co., by its
Proprietor Mohammed Qamar ...Petitioner

Vs

The Deputy Commissioner of
Customs (Gr.7H), No.60,
Rajaji Salai, Custom House,
Chennai-1. ...Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records connected with the impugned communication of the respondent herein comprised in F.No.S.Misc.351/2017-Gr.7B/7H dated 22.9.2017 conveying the provisional release order passed by the competent authority under Section 110A of the Customs Act in so far as it related to condition Nos.2 and 3 for the grant of provisional release of the goods seized and covered under Bill of Entry No.9988693 dated 06.6.2017, quash the same and consequently modify condition Nos.2 and 3 of the impugned communication dated 22.9.2017 imposed for the provisional release of the above goods in terms of the ruling of the Hon'ble Apex Court in the case of M/s.Navshakthi Industries Pvt. Ltd. dated 04.5.2011 and the Customs (Provisional Duty Assessment) Regulations, 1963.

For Petitioner : Mr.S.Baskaran

For Respondent : Mrs.R.Hemalatha, SPC

ORDER

Mrs.R.Hemalatha, learned Senior Panel Counsel accepts notice for the respondent. Heard both. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner has filed this writ petition challenging an order passed by the respondent dated 22.9.2017 while considering the request made by the petitioner for the grant of provisional release of the goods under Section 110A of the Customs Act in respect of the goods imported vide Bill of Entry No.9988693 dated 06.6.2017.

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3. The petitioner approached this Court earlier and filed W.P.No.23392 of 2017 praying for a direction upon the respondents therein to provisionally release the goods covered by the said Bill of Entry under Section 110A of the said Act. By order dated 12.9.2017, this Court, taking into consideration the fact that the Bill of Entry was filed on 06.6.2017 and that examination of goods has been done by the Authorities, directed the respondents therein to consider the representation of the petitioner for provisional release of the goods, which are not prohibited and where are no issues including issues pertaining to intellectual property rights. The respondent was also granted liberty to impose conditions as may be required while granting provisional release of the goods, which are not either prohibited or restricted and where there are no issues for granting provisional release. The said directions were to be complied with within a time frame.

4. Pursuant to the said directions, the respondent imposed the following three conditions for the provisional release of the goods, which are not prohibited or restricted and where there are no other issues for grant of provisional release :

> "a. Execution of a personal bond for the value of Rs.2,29,98,138/-
>
> b. Furnishing of a bank guarantee for Rs.1,70,00,000/- and
>
> c. Payment of applicable differential duty of Rs.64,30,210/- on the redetermined value as per DRI, CZU report."

5. The learned counsel for the petitioner submits that the petitioner is unaware as to how the respondent arrived at the value for execution of a personal bond and as to how the amount, for which, the bank guarantee has to be furnished, was calculated. According to the learned counsel, the conditions imposed are onerous especially when the value of the entire consignment itself is very meagre and at best, the maximum duty liability will be around Rs.10 lakhs.

6. Reiterating the stand taken by the Department, the learned Senior Panel Counsel submits that certain goods being prohibited goods, they have been seized and in respect of other goods, conditions have been imposed, which are reasonable.

7. However, from the counter affidavit, this Court finds that the manner, in which, the quantum for furnishing of bank guarantee was calculated at Rs.1.70 Crores, was not clearly stated. Therefore, when matter came up for hearing on 10.4.2018, the learned Senior Standing Counsel was directed to get specific instructions from the respondent. Pursuant to that, the

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Assistant Commissioner of Customs (Legal Sea-II) addressed the learned Senior Panel Counsel vide letter dated 11.4.2018 stating that the sum of Rs.1.70 Crores was arrived at on the levies to be imposed during adjudication namely redemption fine under Section 125 of the said Act on the assessable value and penalty under Sections 112A and 114 A of the said Act.

8. The letter dated 11.4.2018 further states that the differential duty on Rs.64,30,210/- has been arrived at on the redetermined value as per the DRI, CZU report. Further, a reference has been made to an order of this Court in W.P.No.1549 of 2018 dated 01.2.2018 [M/s.Novel Impex Vs. Assistant Commissioner of Customs (Group-3), Chennai-1] wherein the importer was directed to file an appeal before the Commissioner of Customs (Appeals).

9. After elaborately hearing the learned counsel for the parties and carefully perusing the materials placed on record, this Court is of the view that the conditions imposed in the impugned order can be slightly modified. This is so because the goods, which are permitted for provisional release, have already been scrutinized by the Department and it appears that the except for the prohibited goods and except for the goods where there are violations with regard to intellectual property rights, the Department is willing to release the same.

10. Section 110A of the said Act provides for provisional release of the goods, documents and things seized pending adjudication. It states that any goods, documents or things seized under Section 110, may, pending the order of the Adjudicating Authority, be released to the owner on taking a bond from him in the proper form with such security and conditions as the adjudicating authority may require.

11. Thus, the power under Section 110A of the said Act is to make a delicate balance between the importer of the goods and the Revenue. In other words, the interest of the Revenue should be sufficiently safeguarded, so that when the Adjudicating Authority takes up the case for final adjudication, they should be able to recover the duties and other levies and the order passed by the Adjudicating Authority cannot be reduced to a paper order.

12. Bearing in mind the object of the said provision, if this Court examines the impugned order, it is found that the direction to furnish bank guarantee for a sum of Rs.1.70 Crores

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apart from executing a personal bond for a sum of Rs.2.29 Crores and payment of differential duty of Rs.64,30,210/- appear to be onerous. Therefore, this Court is of the view that interest of the Revenue can be protected sufficiently by slightly modifying the conditions imposed in the impugned order.

13. So far as the decision in the case of M/s.Novel Impex is concerned, it appears that this Court, in the said case, found that there is an alternate remedy available to the petitioner therein by way of appeal. When the petitioner therein filed an appeal before the Commissioner of Appeals, it appears that the same has been dismissed and the further appeal has been filed before the Customs, Excise and Service Tax Appellate Tribunal, which is yet to attain finality. Thus, taking into consideration the fact that the Bill of Entry was filed in June 2017 and that the respondent himself is willing to provisionally release the goods, this Court is inclined to dispose of the writ petition by modifying the conditions imposed in the impugned order.

14. Accordingly, the writ petition is partly allowed by directing the petitioner to comply with the following conditions :

(i) The petitioner is directed to pay the applicable differential duty to the tune of Rs.64,30,210/- (Rupees sixty four lakhs thirty thousand two hundred and ten only) on the redetermined value as per the report of the DRI, CZU.

(ii) The petitioner shall execute a personal bond for the value of Rs.4,00,00,000/- (Rupees four crores only) and keep the bond alive till final adjudication is made.

(iii) Upon compliance of the above twin conditions, in accordance with the stipulations of the respondent Department, the goods shall be released provisionally within a period of one week from the date, on which, the petitioner complies with the above twin conditions.

(iv) Since the goods have been detained and since the DRI has taken up the case for investigation, it goes without saying that the petitioner is entitled to a certificate for waiver of demurrage and the detention

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charges from the date of detention till the date of release. On an application being made, the respondent shall consider and grant the certificate in the proper format.

No costs. Consequently, the connected WMP is closed.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

To

The Deputy Commissioner of Customs (Gr.7H), No.60, Rajaji Salai, Custom House, Chennai-1.

+ 2 cc to Mr.S.Baskaran Advocate,SR.27981

+ 1 cc to Mrs.R.Hemalatha Advocate,SR.28188

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