IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-14628-2018

Date of Decision: 31.5.2018

M/s SNH Steels, Mandi Gobindgarh

....Petitioner.

Versus

Union of India and others

...Respondents.

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL, ACTING CHIEF JUSTICE.

HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

PRESENT: Mr. Saurabh Kapoor, Advocate for the petitioner.

AJAY KUMAR MITTAL, ACJ.

1. In this writ petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of certiorari for quashing the order dated 20.10.2017 (Annexure P-9). Further, a direction has been sought to the respondents to release the consignment of imported goods comprising of Re-Rollable Steel Scrap Imported vide Bill of Entry dated 7.8.2015 and to waive the amount of demurrage/detention charges.

2. The petitioner is engaged in the business of import and trading of Steel Scrap. The petitioner purchased one consignment of Re-Rollable Steel Scrap on High Sea Sales basis from M/s BMR Global Corporation and imported vide invoice dated 7.5.2015. The petitioner made a request to respondents No.2 and 3 for opening of the Bill of Entry which was granted on 7.8.2015 and thereafter the Bills of Entry dated 7.8.2015 were issued for clearance of the goods comprising of Re-Rollable Steel Scrap. At the time of filing of the Bill of Entry, the petitioner had declared and paid the

customs duty amounting to ₹ 7,81,399/-. Respondent No.3 obtained the opinion of Local Chartered Engineer who vide its report dated 24.8.2015 opined that the goods imported by the petitioner were 129.94 of the Re-Rollable Steel Scrap which was in the form of Seam Less Pipes Gas Cut and there thermally insulated with Polyurethane Foam. The petitioner vide letter dated 25.8.2015 requested the respondents to decide its case on Spot Adjudication basis as the goods were incurring heavy demurrage and detention charges, but to no effect. On 21.9.2015, the respective samples of the material had been drawn from the consignment to be sent for testing to the Central Revenue Control Laboratory (CRCL), New Delhi. The CRCL vide its report dated 9.10.2015 informed that the sample was in the form of Off White Lump having uneven surfaces and was made of synthetic polymer. Respondent No.3 vide letter dated 23.11.2015 requested the Director, CRCL, New Delhi to send the report for finalizing the assessment. The CRCL vide its letter dated 4.1.2016 had informed that the samples tested were found to contain heavy metals like Lead, Nickel Cadmium and Chromium within the prescribed limit as per Schedule II of the Hazardous Waste Management and Trans-boundary Movement Rules, 2008. When the goods were neither seized nor released by the respondents, the petitioner filed CWP-3242-3016 and during the pendency of the said writ petition, respondent No.2 vide order dated 18.2.2016 (Annexure P-1) ordered for confiscation of the goods and also imposed redemption fine and penalty. The said writ petition was dismissed as withdrawn by this Court vide order dated 5.4.2016 (Annexure P-2) with liberty to the petitioner to challenge the final order by way of an appeal. In pursuance thereto, the petitioner filed an appeal before the Commissioner of Customs (Appeals) who vide order dated 4.1.2017 (Annexure P-3) dismissed the said appeal. Against the orders, Annexures P-1 and P-3, respectively, the petitioner filed an appeal before the Customs, Excise and Service Tax Appellate Tribunal (in short, "the Tribunal"). The Tribunal vide order dated 11.7.2017 (Annexure P-4) allowed the appeal and ordered for the release of the goods without any redemption fine and penalty. In response thereto, the petitioner vide letter dated 10.8.2017 (Annexure P-5) requested respondents No.2 and 3 for final assessment of the Bill of Entry and release of the goods as per the declaration and for issuance of detention memo for getting the goods released. After having been accepted the final order dated 11.7.2017 by respondent No.2, the goods were permitted out of charge vide order dated 29.9.2017 (Annexure P-6). Since the goods were permitted to be assessed to final duty without any levy of redemption fine and penalty, respondent No.4 demanded the ground rent detention charges. The petitioner vide letters dated 16.9.2017 and 6.10.2017 (Annexures P-7 and P-8, respectively) requested respondent No.3 to issue detention certificate in terms of Handling of Cargo in order to take delivery of the goods. Respondent No.3 vide letter dated 20.10.2017 (Annexure P-9) informed that since no detention memo or panchnama had been issued by the Anti Smuggling Staff, therefore, the same cannot be issued to the petitioner. Again the petitioner vide letters dated 11.9.2017, 7.11.2017 and 9.1.2018 (Annexure P-10 to P-12, respectively) requested respondent No.2 to take necessary steps for issuance of detention memos. In pursuance to letter, Annexure P-12, respondent No.2 vide letter dated 24.1.2018 (Annexure P-13) directed respondent No.3 that since the goods were detained at the investigation stage itself, the records be checked and the goods be permitted to be released. In response thereto, vide letter dated 1.2.2018 (Annexure P-14), respondent No.3 was directed to release the goods to the petitioner. The petitioner vide letter dated 26.2.2018 (Annexure P-15) requested respondent No.2 to grant detention memos for delivery of goods. Respondent No.4 vide letter dated 17.4.2018 (Annexure P-16) issued notice to the petitioner for disposal of the cargo. Accordingly, the petitioner sent a letter dated 22.4.2018 (Annexure P-17) to respondent No.2 not to auction the goods as the matter was pending adjudication before the competent authority, but no response has been received till date. Hence, the present writ petition.

3. Learned counsel for the petitioner submitted that for the relief claimed in the writ petition, the petitioner has sent a letter dated 22.4.2018 (Annexure P-17) to respondent No.2, but no action has so far been taken thereon.

4. After hearing learned counsel for the petitioner, perusing the present petition and without expressing any opinion on the merits of the case, we dispose of the present petition by directing respondent No.2 to take a decision on the letter dated 22.4.2018 (Annexure P-17), in accordance with law by passing a speaking order and after affording an opportunity of

hearing to the petitioner within a period of one month from the date of receipt of the certified copy of the order.

(AJAY KUMAR MITTAL)
ACTING CHIEF JUSTICE

May 31, 2018 **(TEJINDER SINGH DHINDSA)**
gbs **JUDGE**

Whether Speaking/Reasoned **Yes/No**

Whether Reportable **Yes/No**