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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 6492/2018**

Date of decision: 1<sup>st</sup> June, 2018.

AGYA IMPORT LIMITED

....Petitioner

Through: Mr. Priyadarshi Manish, Ms.  
Anjali J. Manish and Ms. Nidhi Saini,  
Advocates.

versus

JOINT COMMISSIONER OF CUSTOMS (SIIB-IMPORT), ICD,  
TUGHLAKABAD, NEW DELHI & ANR.

...Respondents

Through: Mr. Sanjeev Narula, Sr.  
Standing Counsel for Customs.

**CORAM:**

**HON'BLE MR. JUSTICE SANJIV KHANNA**

**HON'BLE MR. JUSTICE CHANDER SHEKHAR**

**SANJIV KHANNA, J. (ORAL)**

Counsel for the respondents, who is present on advance notice, has raised a preliminary objection and states that the impugned communication/order dated 28<sup>th</sup> May, 2018 is appealable before Commissioner (Appeals).

2. Counsel for the petitioner has drawn our attention to paragraphs U, V, W and X of the present writ petition and submits that in spite of statutory appellate remedy, in some cases, Delhi High Court has interfered with the orders under Section 110A of the Customs Act, 1962 (Act, for short), hence relegating the petitioner to a statutory remedy would not be efficacious.

3. Counsel for the respondents have, however, drawn our attention to order dated 14<sup>th</sup> November, 2017 passed in W.P. (C) No. 10015/2017, *Hind Global Enterprises versus the Commissioner of Customs & Anr.*, wherein earlier decisions were considered and thereafter writ petition was not entertained leaving it to the petitioner therein to take recourse to statutory appellate remedy.

4. On 24<sup>th</sup> February, 2016, the petitioner had statedly imported 17 pellets with 269 cartons of 'Pellets German Bitter Hopes Herkules: 2013, Alpha Acid 16.1%' (Hops Pellets, for short) from Germany. It appears that the petitioner did not file bill of entry for home consumption till 23<sup>rd</sup> June, 2016 i.e. nearly four months after the import.

5. One of the directors of the petitioner, as per the writ petition, was arrested in connection with import of similar goods, which had been seized by the Special Investigation Branch of Patparganj Commissionerate and had remained in judicial custody from 9<sup>th</sup> March, 2016 to 10<sup>th</sup> May, 2016.

6. On 26<sup>th</sup> July, 2016, the Hops Pellets were examined and on belief and basis that they were undervalued, they were seized.

7. After about 2 months, on 9<sup>th</sup> September, 2016, the petitioner made a request for warehousing of Hops Pellets under Section 49 of the Act.

8. Upon completion of investigation, show cause notice dated 23<sup>rd</sup> January, 2017 has been issued to the petitioner, to which reply has been filed. Proceedings pursuant to show cause notice are pending adjudication. It is stated that similar proceedings pursuant to show

cause notices on import of Hops under other bill of entries are also pending.

9. During pendency of the proceedings, the petitioner by letter dated 29<sup>th</sup> December, 2017 addressed to the Commissioner of Customs, ICD, Tughlakabad, had made a request for correction of the bill of entry due to clerical error. The consignment, it was stated had been wrongly declared under Chapter 13021300 instead of Chapter 12101000, which had resulted in the petitioner depositing excess duty. This request was repeated vide letter dated 1<sup>st</sup> January, 2018.

10. On 23<sup>rd</sup> March, 2018, nearly 18 months after seizure of the goods, the petitioner made a request for provisional release under Section 110A of the Act. As there was delay in disposal of the said request, W.P. (C) No. 5057/2018 was filed in this Court and vide order dated 11<sup>th</sup> May, 2018, the respondents were asked to obtain instructions. On 24<sup>th</sup> May, 2018, counsel for the respondents had stated that provisional release order would be passed on or before 29<sup>th</sup> May, 2018.

11. Provisional release order was passed on 28<sup>th</sup> May, 2018.

12. The petitioner in this writ petition is aggrieved by the conditions imposed vide the provisional release order dated 28<sup>th</sup> May, 2018.

13. Counsel for the petitioner, during the course of hearing, had submitted that there was ambiguity whether communication dated 28<sup>th</sup> May, 2018 was an order passed under Section 110A of the Act. Counsel for the respondents on instructions has stated that the letter dated 28<sup>th</sup> May, 2018 communicates order under Section 110A of the Act, passed by Assistant Commissioner, Grade-I, ICD, Tughlakabad

and is appealable before Commissioner (Appeals). As recorded above, counsel for the petitioner accepts that an order under Section 110A of the Customs Act can be made subject matter of an appeal.

14. We are not inclined to entertain the present writ petition and leave it to the petitioner to invoke the statutory appellate remedy. Disputed questions of facts are involved as is apparent from the chequered history. Preliminary question and issue would be regarding to valuation of Hops Pellet imported from Germany. Consignment was imported in February, 2016. The show cause notice was issued on 23<sup>rd</sup> January, 2017. Request for provisional release was made after 18 months of seizure.

15. Therefore, without making any comments on merits, we leave it to the petitioner to invoke statutory appellate remedy. We hope and trust that if the petitioner files an appeal, the same would be disposed of expeditiously.

16. Recording the aforesaid, the writ petition is disposed of as not entertained with no order as to costs.

**SANJIV KHANNA, J.**

**CHANDER SHEKHAR, J.**

**JUNE 01, 2018**  
NA/VKR