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

\+ W.P.(C) 6967/2017, C.M. APPL.44688/2017

BALJIT NUTRITION STORES (P) LTD. ..... Petitioner

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

versus

THE PRINCIPAL COMMISSIONER OF CUSTOMS(IMPORT), ICD, TUGHLAKABAD, NEW DELHI-110020 & ANR.

..... Respondents

Through : Sh. Rishi K. Awasthi, Advocate, for Respondent No.1.

Sh. Kirti Uppal, Sr. Advocate with Sh. Pradeep Kumar Mahajan, Ms. Shubhangi Asthana and Sh. Aditya Awasthi, Advocates, for Respondent No.3.

**CORAM:**
**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**
**HON'BLE MR. JUSTICE A. K. CHAWLA**

**O R D E R**

**% 09.07.2018**

The petitioner seeks a direction that the goods which was sought to be confiscated by the customs authorities on 08.06.2017 subject to payment of redemption fine and subsequently warehoused with the second respondent, i.e. Container Corporation of India Ltd. (CONCOR) ought to be released. After notice was issued, at one stage, the Court appointed a Local Commissioner upon being made aware of the undisputed fact that the petitioner had paid the redemption fine as also demurrage charges to CONCOR and upon demanding so, the CONCOR could not release the goods.

This Court had appointed a Local Commissioner who visited the site and confirmed that in fact no goods were in existence at the place. CONCOR has also indicated that an FIR was lodged with the police which is under investigation. Its position, however, is that after the warehousing and given the considerable period of delay in the issuance of the order, the goods were sent for upward storage to Asian which was subsequently impleaded as the third respondent.

Learned counsel for the petitioner stresses that the absence of the goods has resulted in further consequences in as much as the re-export commitments could not be fulfilled, and that in these circumstances, the Court should pass appropriate orders.

It is evident that when imported, there was doubt as to whether the goods answering to the description in the bills of entry could be permitted to be re-exported. It is not disputed that after 100% inspection which was made after detention of the goods, the customs authorities made the order on 08.06.2017. The order, in fact, imposed redemption fine which was apparently satisfied. The petitioner also paid demurrage charges to the CONCOR.

Given these facts, there is no doubt that the petitioner's grievance, in one sense, is justified. However, as to the appropriateness of the remedy it seeks, the production of goods or their equivalent or some kind of compensation, this Court is of the opinion that the nature of dispute is such that it cannot be adjudicated in writ proceedings. As to which respondent – whether CONCOR or the third respondent is liable, if so, to what extent, and what would be the appropriate measure of compensation or damages also is a matter which requires trial, given the petitioner's claims for being permitted to re-export the goods, are matters that are to be considered in civil proceedings. Since the petitioner's goods were subject to 100% checks as well as valuation and upon payment of duty, they were permitted to be acquired subject to redemption fine, the petitioner could have no disability in discharging its ability to prove certain facts.

In the light of the above observations, the Court is of the opinion that the present petition seeking relief of release of goods which are no longer in existence cannot be granted. If the petitioner wishes, it can agitate its grievance and seek appropriate remedies in accordance with law in civil proceedings. All rights and contentions of the parties are reserved.

The petition is disposed of in the above terms.

**S. RAVINDRA BHAT, J**

**A. K. CHAWLA, J**

**JULY 09, 2018/ajk**