
IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Civil Writ Petition No.1304 of 2019

Date of decision: March 07, 2019

M/s Champion Photostat Industrial Corporation

....Petitioner

versus

Union of India and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL**

Present: Mr. Saurabh Kapoor, Advocate and
Mr. Rishabh Kapoor, Advocate for the petitioner.

Mr. Tajender Joshi, Senior Standing Counsel
for respondents No.2 & 3-Revenue.

AJAY KUMAR MITTAL, J. (ORAL)

1. The instant writ petition has been filed by the petitioner under Article 226 of the Constitution of India for issuance of a writ/order or direction for setting aside the order No.LDH-CUS-JS-RGG-082-18-19 dated 26.12.2018 (**Annexure P-9**) passed by respondent No.3 whereby the request of the petitioner for provisional release of the goods was rejected being in violation of Articles 14 and 19(1) (g) of the Constitution of India.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioner is an importer engaged in the business of import and trading of all kinds of multifunctional devices and in the course of business, it imported one consignment of 272 pieces of old and used digital multifunctional devices. On 12.09.2018, the petitioner purchased two consignments of Old & Used Digital Multifunctional devices from M/s Global Copier Resources Pvt. Ltd., Singapore. On 25.09.2018, the goods landed at the port of Nava Sheva wherein the

shipping line filed the import General Manifest. The petitioner, on 09.10.2018, requested for opening of the Bill of Entry under the Self Category and the same was allowed by respondent No.2. On 17.10.2018, the petitioner further requested for de-stuffing of the goods under Section 49 of the Customs Act, 1962 (hereinafter referred to as, 'the Act') and the same had been allowed to be de-stuffed and kept in the Customs Warehouse. The petitioner, vide letter dated 12.11.2018 (Annexure P-6), requested respondent No.3 for provisional release of the goods. Instead, the Inspector (SIIB), vide order 18.12.2018 (Annexure P-8), seized the goods of the petitioner in terms of Section 110 of the Act. Vide order dated 26.12.2018 (Annexure P-9), Joint Commissioner, Customs Commissionerate, Sahnewal, Ludhiana i.e. respondent No.3 had rejected the request of the petitioner for provisional release of the goods. Hence the present writ petition.

3. Learned counsel for the petitioner claimed that in view of the order dated 24.01.2019 passed by the Supreme Court in **Civil Appeal No(s).1057 of 2019**, titled as **Commissioner of Customs vs. M/s Atul Automations Pvt. Ltd.**, the respondents/importers therein were directed to deposit bond without sureties for 90% of the enhanced valuation of the goods leaving it to the DGFT to decide whether confiscation was required to be ordered or release of goods was to be granted on redemption at the market value. Accordingly, the prayer as noticed above was made for provisional release of the goods.

4. Notice of motion was issued. In response thereto, Mr. Tajender Joshi, Senior Standing Counsel, has put in appearance on behalf of the respondents and has filed reply dated 06.02.2019 wherein it has been stated that the petitioner had imported Old & Used Digital Multifunctional Devices with standard Accessories under BOE No.8498453 dated 17.10.2018 but failed to produce valid authorization as stipulated in para 2.31 of the Foreign

of the provisions of Para 2.31 of the Foreign Trade Policy and the petitioner did not possess mandatory BIS Certification as per Electronics and IT Goods (Requirement for Compulsory Registration order) (CRO), 2012 of the Ministry of Electronics and Information Technology (MEITY). Learned counsel for the respondents has also furnished a communication dated 08.02.2019, addressed to him, by the Commissioner of Customs, ICD-GRFT, Sahnewal, Ludhiana, intimating that the Supreme Court had passed the order in **M/s Atul's case (supra)**, for the release of the goods on payment of redemption fine and imposition of personal penalty, whereas, the request of the petitioner for releasing the goods provisionally was rejected on 26.12.2018 (Annexure P-9), which was prior to the judgment passed by the Supreme Court on 24.01.2019.

5. After hearing learned counsel for the parties and perusing the aforesaid communication dated 08.02.2019, the present writ petition is allowed and the impugned order dated 26.12.2018 (Annexure P-9) is set aside and the matter is remitted to the Joint Commissioner of Customs, Inland Container Depot, Gateway Rail Freight Link, Sahnewal, Ludhiana i.e. respondent No.3 to pass a fresh order in respect of provisional release of the goods after affording an opportunity of hearing to the authorised representative of the petitioner-Firm and by passing a speaking order in accordance with law. Needful shall be done within fifteen days from the date of receipt of certified copy of this order.

(AJAY KUMAR MITTAL)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

March 07, 2019

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Whether speaking/reasoned?

Yes/No

Whether reportable?

Yes/No