IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-7312-2019

Date of Decision: 18.3.2019

Rasila Filling Station

...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. Jagmohan Bansal, Advocate for the petitioner.

Mr. Sourabh Goel, Senior Standing Counsel, CBIC, for the respondents.

AJAY KUMAR MITTAL, J.

1. This writ petition has been filed under Articles 226/227 of the Constitution of India seeking declaration that notification dated 16.2.2019 (Annexure P-8) is not applicable to the goods already entered into India on or before 16.2.2019 and bill of entry had already been filed. Further, a writ of mandamus has been sought directing respondent No.3 to release the goods without applying notification dated 16.2.2019.

2. The petitioner is importing different commodities from Pakistan. The petitioner vide invoice and packing list dated 7.2.2019 (Annexures P-1 and P-2, respectively) exported goods to India from a Pakistani trader. The exporter in Pakistan filed cargo manifest on 12.2.2019 (Annexure P-3) and the Customs Authorities, Pakistan examined the goods and permitted export thereof. The goods entered in Indian Territory on 16.2.2019 through truck bearing registration No. TLA-970 and the material

was unloaded in Central Warehouse Corporation on 16.2.2019 at 9.45 AM (Annexure P-4). The petitioner filed Bill of Entry dated 16.2.2019 declaring all the particulars of imported goods. The said Bill of Entry was assessed but prior to deposit of duty and clearance of goods, Government of India at about 8.30 AM issued a notification dated 16.2.2019 (Annexure P-8) levying duty @ 200% on the goods imported from Pakistan. The petitioner through its Customs Broker filed Bill of Entry along with copy of driving license of the truck driver and import manifest. Since Attari Road is an EDI Port so the Customs Broker filed online checklist which was converted into Bill of Entry dated 16.2.2019 (Annexure P-5). The Customs Authorities in the EDI System assessed Customs Duty Liability including Basic Customs Duty, Social Welfare Surcharge and Integrated Goods and Service Tax (IGST). The cement falling under Chapter Heading 25232910 was exempt from Basic Customs Duty vide Entry No. 129 of notification dated 30.6.2017 (Annexure P-6). At the time of filing of Bill of Entry, the rate of Basic Customs Duty leviable was nil and IGST was leviable @ 28%. Accordingly, the Bill of Entry was generated depicting Basic Customs Duty nil and IGST @ 28% amounting to ₹ 75,597/-. The petitioner deposited the said amount online on 16.2.2019 as is clear from the online slip dated 16.2.2019 (Annexure P-7). On account of Pulwama attack, Central Government decided to increase Basic Customs Duty on all goods originating in or exported from Islamic Republic of Pakistan. The Government did not withdraw notification dated 30.6.2017 whereby cement and a number of other articles were exempted from Basic Customs Duty, however, issued notification dated 16.2.2019 (Annexure P-8). The respondents revised Bill of Entry charging Basic Customs Duty @ 200%, Social Welfare Surcharge @ 10% and IGST @ 28% amounting to total duty at the rate of more than 270% as is clear from the EDI status report dated 16.2.2019 (Annexure P-9). The originally assessed duty was ₹ 75,597/- and the revised duty is assessed at ₹ 7,65,610/-. Accordingly, the petitioner moved a representation dated 21.2.2019 (Annexure P-10) to respondent No.2 for release of the goods without applying notification dated 16.2.2019, 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 representation dated 21.2.2019 (Annexure P-10) to respondent No.2, but no action has so far been taken thereon.

4. After hearing learned counsel for the parties, 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 representation dated 21.2.2019 (Annexure P-10), in accordance with law by passing a speaking order and after affording an opportunity of hearing to the petitioner within a period of 15 days from the date of receipt of the certified copy of the order.

(AJAY KUMAR MITTAL)
JUDGE

March 18, 2019
gbs

(MANJARI NEHRU KAUL)
JUDGE

Whether Speaking/Reasoned **Yes/No**

Whether Reportable **Yes/No**