

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-7405-2019

Date of Decision: 18.3.2019

S.S. Cemtech

...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-6) 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 both 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

was unloaded in Central Warehouse Corporation on 16.2.2019. The petitioner through its Customs Broker filed Bill of Entry along with copy of driving license of driver of the truck 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-4). 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) is exempt from Basic Customs Duty vide Entry No.129 of notification dated 30.6.2017 (Annexure P-5). 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% total duty amounting to ₹ 73,341/-. 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-6). 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-7). The originally assessed duty was ₹ 73,341/- and the revised duty is assessed at ₹ 8,10,952/-. Hence, the present writ petition.

3. Learned counsel for the petitioner prayed that liberty be granted to the petitioner to file a detailed and comprehensive representation before the appropriate authority by incorporating the grievance as raised in the

present writ petition and direction be issued to the authority concerned to decide the representation expeditiously in a time bound manner in accordance with law.

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 granting liberty to the petitioner to file a detailed and comprehensive representation raising all the pleas as raised in the present writ petition before the appropriate authority. It is directed that in the event of a representation being filed by the petitioner within a period of 15 days from the date of receipt of the certified copy of the order, the same shall be decided 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 said representation.

(AJAY KUMAR MITTAL)
JUDGE

March 18, 2019
gbs

(MANJARI NEHRU KAUL)
JUDGE

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No