IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-1964-2017

Date of Decision: 31.1.2019

Inder International, Ludhiana and another

...Petitioners.

Versus

Additional Director General, Directorate of Revenue Intelligence, Ludhiana and another

...Respondents.

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE AVNEESH JHINGAN.

PRESENT: Mr. Pawan Pahwa, Advocate for the petitioners.

Mr. Satish Aggarwal, Advocate for respondent No.1.

AJAY KUMAR MITTAL, J.

1. This order shall dispose of two petitions bearing CWP Nos. 1964 and 2008 of 2017, as according to learned counsel for the parties, the identical facts and issues are involved therein. For brevity, the facts are being taken from CWP-1964-2017.

2. CWP-1964-2017 has been filed under Articles 226/227 of the Constitution of India, whereby the petitioners have prayed for issuance of a writ of certiorari for quashing the show cause notice dated 13.12.2016 (Annexure P-1) and the order dated 23.12.2016 (Annexure P-19) passed by this Court in CWP-10036-2016.

3. A few facts necessary for adjudication of the instant petitions as narrated therein may be noticed. The petitioners are engaged in the business of import and trading of Prime/Secondary Cold Rolled Sheets/Coils (Non

Alloys). During the course of business, the petitioners imported five consignments of Cold Rolled Coils (Non Alloy) Secondary and Defective at the Sea Port at Ballard Estate, Shevree Yard, Mumbai and filed the Bills of Entries Nos. 3753509, 3749279 both dated 29.12.2015, 4305063 dated 9.2.2016 and 4789284 dated 17.2.2016. The said consignments were detained by respondent No.1 and subsequently by respondent No.2 on the directions issued by respondent No.1 vide letters dated 14.12.2015, 28.12.2015, 19.1.2016 and 4.2.2016 (Annexure P-2 Colly). Since the goods were not being examined after the filing of the Bills of Entries and demurrage and detention charges were being taken, the petitioners filed CWP-185-2016. Thereafter, the examination of the goods started on 14.1.2016 by the local Chartered Engineer appointed by respondent No.2 who drew samples of the goods and sent the same for testing to M/s Perfect Laboratory, Pune. The Chartered Engineer opined that the goods were 'Cold Rolled Coils' and submitted his report dated 19.1.2016 (Annexure P-3) to respondent No.2. The petitioners submitted the reports along with provisional assessment order dated 28.1.2016 directing the petitioners to furnish bond along with Bank Guarantee for clearance of goods before this Court and this Court vide order dated 3.2.2016 (Annexure P-4) noticed that the action of the respondents was not bonafide. The officers of respondent No.1 recorded a statement of Customs Local Chartered Engineer and also got the revised reports from the private Testing Laboratory and submitted the same by way of affidavit dated 4.4.2016 (Annexure P-5) before this Court. The goods were ordered to be released on provisional assessment basis but the same were seized vide order dated 22.2.2016 (Annexure P-6) on the basis of test report obtained from M/s TCR Engineering (P) Ltd. The said goods were released vide provisional release order dated 23.2.2016 (Annexure P-7) subject to deposit of differential customs duty along with bank guarantee. The petitioners challenged the order, Annexure P-6, by filing CWP-4648-2016 and this Court vide order dated 4.4.2016 (Annexure P-8) directed the respondents to draw samples and destuff the material. Since one of the Custodian Mumbai Port Trust of the respondents ordered for auction of the goods, the petitioners withdrew CWP Nos. 185 and 4648 of 2016 with liberty to file a fresh one challenging all the orders. This Court vide order dated 9.5.2016 (Annexure P-9) dismissed the said writ petition with liberty to file a fresh one on the same cause of action. Thereafter, the petitioners filed CWP-10036-2016 and this Court vide orders dated 3.6.2016 and 20.6.2016 (Annexures P-10 and P-11, respectively) ordered for fresh drawl of the samples from each consignment and for sending the same for testing to Bokaro Steel Plant to find out as to whether the goods were Hot Rolled or Cold Rolled. The reports of Bokaro Steel Plant were received directly in the Court which were opened and it was opined therein that the material was Cold Rolled Steel as is clear from the order dated 8.7.2016 (Annexure P-12). This Court vide order dated 12.7.2016 (Annexure P-14) ordered for release of the goods and as regard the variation of thickness of the goods as raised by respondent No.1 vide affidavit dated 12.7.2016 (Annexure P-13), petitioner No.1 was directed to furnish the bank guarantee. As the goods were not released, this Court vide order dated 2.8.2016 (Annexure P-15) ordered for release of the goods. Since the goods were found to be 'Cold Rolled', respondent No.2 assessed the Bills of Entries and ordered for release of the goods vide out of charge order, Annexure P-16. Vide letter dated 2.8.2016 (Annexure P-17), respondent No.2 returned the Bank Guarantee of the petitioners. The orders dated 12.7.2016 and 2.8.2016 (Annexures P-14 and P-15, respectively) were challenged by the Mumbai Port Trust before the Supreme Court and the Supreme Court set aside the said orders and directed this Court to decide the writ petition finally. During the pendency of SLP (C) 23479-23480 of 2016, the Union of India had also filed SLP and the same was also disposed of by the said common order. Respondent No.1 directed respondent No.2 to file an appeal against the impugned order which was filed by respondent No.2 vide letter dated 27.9.2016 (Annexure P-18). In pursuance to the order passed by the Supreme Court, this Court vide order dated 23.12.2016 (Annexure P-19) allowed the writ petitions. However, during the pendency of the writ petitions, respondent No.1 issued a show cause notice dated 13.12.2016 (Annexure P-1) raising a demand of ₹ 6,52,479/- as differential customs duty in respect of Bill of Entry dated 17.2.2016, safeguard duty of ₹ 11,57,486/- qua Bill of Entry dated 29.12.2015, confiscating the imported goods valuing ₹ 45,61,339/- and ₹ 57,87,431/- along with interest and penalty. Hence, the present writ petition.

4. Learned counsel for the petitioners submitted that the show cause notice dated 13.12.2016 (Annexure P-1) is without jurisdiction. Learned counsel further urged that the said notice was liable to be quashed being time barred.

5. On the other hand, learned counsel for respondent No.1 submitted that the petitioners were liable to pay the amount as demanded by the show cause notice.

6. After hearing learned counsel for the parties, perusing the

present petitions and without expressing any opinion on the merits of the case, we dispose of the present petitions by granting liberty to the petitioners to file a detailed and comprehensive reply to the show cause notice dated 13.12.2016 (Annexure P-1) raising all the pleas as raised in the present writ petition before the appropriate authority within a period of one month from the date of receipt of the certified copy of the order. It is directed that the concerned authority shall deliberate upon the the said show cause notice and take a decision thereon, in accordance with law by passing a speaking order and after affording an opportunity of hearing to the petitioners within a period of three months from the date of receipt of the said reply. The petitioners shall be entitled to lead any evidence to substantiate their claim before the concerned authority.

(AJAY KUMAR MITTAL)
JUDGE

January 31, 2019
gbs

(AVNEESH JHINGAN)
JUDGE

Whether Speaking/Reasoned **Yes/No**

Whether Reportable **Yes/No**