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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

(1) Civil Writ Petition No. 27022 of 2019 (O&M)
Date of Decision: 20.09.2019

M/s. D M Marketing INC, Mahipalpur, New Delhi
through its Proprietor Damanjeet Singh

.... Petitioner

Versus

Union of India and others

.... Respondents

(2) Civil Writ Petition No. 20988 of 2019 (O&M)

M/s. D M Marketing INC, Mahipalpur, New Delhi
through its Proprietor Damanjeet Singh

.... Petitioner

Versus

Union of India and others

.... Respondents

(3) Civil Writ Petition No. 21886 of 2019 (O&M)

M/s. D M Marketing INC, Mahipalpur, New Delhi
through its Proprietor Damanjeet Singh

.... Petitioner

Versus

Union of India and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE LALIT BATRA

Present: Mr. Saurabh Kapoor, Advocate and
Mr. Rishabh Kapoor, Advocate
for the petitioner (in all cases).

Mr. Sourabh Goel, Sr. Standing Counsel
for the respondent(s)-UOI (in all cases).

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JASWANT SINGH, J. (ORAL)

1. This common order shall dispose of all the three aforementioned writ petitions as they emanate from one Bill of Entry pertaining to import of food supplements comprising of *whey* proteins used

by Sports Persons to supplement their protein intake.

2. It transpires that one of the consignment pursuant to a composite contract for a year, imported vide Bill of Entry No. 3442737 dated 29.05.2019, was detained by the Customs Authorities on the ground of under valuation of the price of imported goods. The petitioner-a proprietor concern, made an application for provisional assessment under Section 18 of the Customs Act, 1962 (for short "The 1962 Act") with a simultaneous prayer for the provisional release of goods, in view of the perishable nature of the imported goods/food supplements.

3. Since the goods were not being released nor provisionally assessed, the petitioner filed the **First Writ Petition** bearing ***CWP No. 20988 of 2019*** seeking a mandamus to the Customs Authorities for undertaking the provisional assessment under Section 18 of "The 1962 Act". During pendency of the said writ petition, the Department commenced assessment proceedings under Section 17 leading to passing of an order dated 13.08.2019 under Section 17(4) of "The 1962 Act", whereby the declared value was rejected and the assessed value was enhanced, demanding a differential duty of ₹ 8,48,102/-.

The passing of the aforesaid order dated 13.08.2019 led the petitioner to file the **Second Writ Petition** bearing ***CWP No. 21886 of 2019*** for challenging the same. Since the petitioner did not accept the enhanced assessed value, the Department in terms of Section 17(5) of "The 1962 Act" was constrained to pass the required speaking order dated 27.08.2019. Resultantly, the petitioner has filed another/**Third Writ Petition** bearing **CWP No. 27022 of 2019** impugning the subsequent order dated 27.08.2019 passed in terms of the previous order dated 13.08.2019.

4. It is not disputed that the petitioner has already filed the Statutory Appeal under Section 128 of "The 1962 Act" assailing the Final Assessment Order dated 27.08.2019 before the Commissioner of Customs (Appeals). It is also not in dispute that the petitioner has deposited an amount equal to 7.5% of the demanded differential duty at the time of filing of the appeal.

5. Counsel for the parties, in view of the aforesaid developments, are agreed that the first two writ petitions bearing *CWP Nos. 20988 & 21886 of 2019* in view of passing of the order dated 27.08.2019 have become infructuous. In view of the statutory alternative remedy available to the petitioner having been availed, the only surviving dispute in writ petition bearing *CWP No. 27022 of 2019* pertains to the release of goods lying detained in the Custom Bonded Warehouse under the custody of the Customs Department.

Counsel for the parties are also agreed that as per scheme of the Customs Act, 1962, there is no provision for ordering the release of the detained goods during pendency of the appeal under Section 128 and/or 129 of "The 1962 Act", therefore, the powers to order the release of goods by this Court exercising jurisdiction Article 226 would be guided by equity and fair play. In support, counsel for the petitioner has cited three judgments ***(i) Modern Insecticides Limited Versus State of Punjab, 2018 (19) G.S.T.L. 412 (P&H); (ii) Kalyan Silks Trichur Pvt. Ltd. Versus Commissioner of Customs, Cochin, 2016 (336) E.L.T. 611 (Ker.); and (iii) Neuvera Wellness Ventures Pvt. Ltd. Versus State of Gujarat, 2019 (26) G.S.T.L. 3 (Guj.)***.

6. Keeping in view the totality of circumstances, we **dispose of all the three writ petitions** with the **direction** to the Commissioner of Customs (Appeals) to decide the pending appeal filed by the petitioner against the order dated 27.08.2019 within three (03) months from the date of receipt of certified copy of this order. We also **direct** that the detained goods of the petitioner shall be released on furnishing of security other than bank guarantee or cash to the satisfaction of the Proper Officer for the remaining demand of differential duty. The Proper Officer shall also issue the detention memo to facilitate the release of goods in accordance with law. The needful shall be done within one week from the date of receipt of certified copy of this order.

(JASWANT SINGH)
JUDGE

September 20, 2019 **(LALIT BATRA)**
'dk kamra' **JUDGE**

Whether Speaking/reasoned	*Yes/No*
Whether Reportable	*Yes/No*