THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

and

THE HONOURABLE SRI JUSTICE T. AMARNATH GOUD

Writ Petition No.1356 of 2020

ORDER : (per Hon'ble M.S. Ramachandra Rao)

The petitioner herein is a partnership firm engaged in international trade in various commodities by way of imports and exports.

2. It imported certain quantity of Silver granules vide Bill of Entry dt.05.04.2019 and 01.04.2019 from Indonesia.

3. The petitioner produced before the respondents Country of Origin Certificate required for claiming Duty exemption bearing Reference No.0030131/JKT/2019, dt.28.03.2019, issued by the competent Office in Jakarta, Indonesia and another Certificate of Origin in Ref.No.0030114/JKT/2019 dt.28.03.2019 also issued by the said competent authority in terms of Notification No.46/2011-CUS as amended, read with Customs Tariff (Determination of Origin of Goods under the Preferential Trade Agreement between the Republic of India and the Republic of Indonesia) Rules, 2009 **(for short, 'the Rules')** notified on 31.12.2009.

4. The petitioner also executed a provisional duty bond supported by 100% Bank Guarantee from a Scheduled Bank to cover the exempted duty from provisional assessment of the subject Bills of Entry and release of goods.

5. The petitioner contends that the respondents are obligated to return the Bank Guarantees given by petitioners since they did not initiate any retroactive check under Rule 7(c) of the Customs Tariff (Determination of Original of Goods under the Preferential Trade Agreement between Governments of Member States of the Association of South-East Asian Nations (ASEAN) and the Republic of India) Rules, 2009 notified on 31.12.2009.

6. The petitioner further contends that even if a request is initiated now by the respondents it would not be a valid request because such a request ought to be in a period not exceeding two (02) months. The petitioner claims that an application under the Right to Information Act, 2005 has been made by the petitioner seeking to ascertain whether any request for verification of the two Certificates of Origin produced by the petitioner was initiated by the respondents, and a reply was received on 06.11.2019 stating that no such request has been made.

7. The petitioner therefore contends that failure of the respondents to release the Bank Guarantees executed by the petitioner and finalizing the petitioner's provisional assessment is causing grave hardship to the petitioner. The petitioner also states that he gave representation on 14.10.2019 to the Deputy Commissioner of Customs

(Imports), and another representation on 18.11.2019 to the Principal Commissioner of Customs / Customs Commissionerate, Hyderabad, but there is no response from the respondents.

8. Sri B. Narasimha Sarma, counsel appearing for respondents, states that there was no retroactive check in terms of Rule 7(c) of the Rules referred to above, and the R.T.I. information furnished to the petitioner on 06.11.2019 confirms the same.

9. In view of the same, since the time limit of two (02) months as laid down in Rule 7(1) has expired, it is the duty of respondents to complete provisional assessment and also return the Bank Guarantees given by petitioner towards the exports made by him under the Bills of Entry dt.05.04.2019 and 01.04.2019.

10. Therefore, the respondents are directed to release the Bank Guarantees furnished by petitioner within two (02) weeks from to-day since they anyway have a bond executed by petitioner; and the respondents shall also complete the provisional assessments in respect of the said Bills of Entry within a period of three (03) months from the date of receipt of copy of the order and communicate their decision to the petitioner.

11. Accordingly, the Writ Petition is allowed with the above directions. No order as to costs.

12. As a sequel, miscellaneous petitions pending if any in this Writ Petition, shall stand closed.

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JUSTICE M.S.RAMACHANDRA RAO

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JUSTICE T. AMARNATH GOUD

Date: 03.02.2020
Note : Issue C.C. in three (03) days.
B/o.
Ndr/*

HIGH COURT FOR THE STATE OF TELANGANA
HYDERABAD