IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(PROCEEDINGS THROUGH V.C.)

CWP No.14651 of 2020
Date of Decision: 04.11.2020

M/s Galloo NV & another

...Petitioners

Versus

Commissioner of Customs & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Mr. Saurabh Kapoor, Advocate,
for the petitioner.

Mr. Tajender K. Joshi, Senior Standing Counsel
for respondents No.1 to 3.

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AUGUSTINE GEORGE MASIH, J. (ORAL)

Petitioners have approached this Court with a prayer for issuance of writ of *mandamus* for deleting the Bill of Entry No.7640930, dated 12.05.2020 (Annexure P-7) filed vide IGM No.2251060, dated 07.04.2020 being illegal, arbitrary and violative of the provisions of the Customs Act, 1962 and in violation of the provisions of Articles 14 and 19 of the Constitution of India.

2. On going through the facts of the case, what finally culls out is that petitioner No.1, who is an Exporter of Ferrous & Non Ferrous Scrap as well as recycled material, has a godown in Belgium. The official respondents have not cancelled the Bill of Entry No.7640930, dated 12.05.2020 and also not permitted the amendment to the Import General

Manifest (for short 'IGM') filed in terms of Section 30 of the Customs Act, 1962. It has been asserted that goods of petitioner No.1, which were exported, are stuck at Port of Inland Container Depot, CONCOR, Ludhiana incurring heavy demurrage and detention charges on daily basis. It is asserted that initially the consignment was prepared in the name of M/s RR Global (India), Mandi Gobindgarh, Punjab – respondent No.4 with 20% advance payment and the balance was to be paid on the presentation of the original documents in the bank of respondent No.4. Advance payment of US $9900 vide Swift Transfer dated 20.02.2020 was made. The delivery on the shipment having reached its destination, has not been taken by respondent No.4 and did not even come forth to take the delivery of the goods. Despite various efforts having been made when respondent No.4 did not come forth, petitioners as well as shipping agent have made a request for amendment in the IGM on 24.06.2020 and 30.06.2020 respectively. The said request, of the petitioners, for amendment has not been decided till date. Since the petitioners were suffering demurrage and other charges on daily basis, they have approached this Court by way of the present writ petition.

3. Upon notice having been issued, reply to the writ petition has been filed by respondents taking therein a plea that 'no objection certificate' of respondent No.4, the original consignee, has not been submitted, because of which the amendment as sought cannot be permitted in the IGM.

4. This, the counsel for the petitioner contends, is not sustainable in the light of the Public Notice dated 07.05.2015 (Annexure P-17). He, on

this basis, contends that the insistence upon the 'no objection certificate' by the official respondents is not sustainable especially when respondent No.4 is not coming forth in any manner despite various efforts having been made. The circular dated 11.04.2017 (Annexure R-1), on which reliance has been placed by the official respondents, would not hold the field in the light of the judgment/order passed by the High Court of Judicature at Madras (Madurai Bench) in **Witthal International Pvt. Ltd. Vs. Asstt. Commissioner of Customs, Tuticorin** {2019 (366) E.L.T. (Mad.)}, where this very circular has been considered and on consideration thereof, in similar circumstances as in the present case, the Court has not agreed with the same and has given a direction to the respondents to take a decision with regard to the claim of the petitioner for amendment of the IGM. Reference and reliance has also been made on another judgment of the Madras High Court in **Indian Overseas Bank Vs. Collector of Customs, Madras** {2000 (123) E.L.T. (Mad.)} as well as the judgment in **Glencore Agriculture India Pvt. Ltd. Vs. Union of India** {2018 (362) E.L.T. 81 (Bom.)}, where the Court had, on taking into consideration Section 30 (3) of the Customs Act, 1962, proceeded to explain the same and has also brought forth the role/responsibility of the respondent and the duties cast upon it for consideration, when a request for amendment of the IGM has been made. Counsel, on this basis, contends that the respondents have, in a mechanical manner, taken an objection of non-receipt of ‘no objection certificate’ on the basis of the circular dated 11.04.2017 without taking into consideration the law and in violation of the provisions of the Customs Act, 1962. The stand of the respondents, thus, cannot sustain. Prayer has, thus, been made that the present writ petition may be allowed directing amendment in the IGM and release of the goods after paying the necessary charges. He further states that the petitioners are ready and willing to give indemnity bonds or any other security to protect third party rights, in case of any claim put forth by any party relating to the goods, which is the subject matter of the present case.

5. On the other hand, learned counsel for the official respondents has asserted that the amendment to the IGM can only be permitted on a 'no objection certificate' having been submitted by respondent No.4, which the petitioners are unable to do and therefore, the amendment in the IGM cannot be permitted and the Competent Authority is unable to accept the prayer of the petitioners. He, however, concedes that no such formal order to that effect has been passed and therefore, the judgments, on which reliance has been placed by the learned counsel for the petitioners referred to above, have not been taken into consideration.

6. We have considered the submissions made by the learned counsel for the parties and with their assistance have gone through the records of the case including the judgments, on which reliance has been placed by the learned counsel for the petitioners and are of the considered view the claim of the petitioners, as put forth by them, for amendment of the IGM, needs to be considered by the Competent Officer, who is respondent no.3 and a decision needs to be taken at an early date keeping in view the fact that the matter is pending since long and the petitioners are suffering on

day to day basis. Direction is, therefore, issued to respondent No.3 to finalize the claim of the petitioners with regard to the amendment of IGM within a period of one week from today, keeping in view of the judgments, reference whereof has been made in the earlier part of this order.

7. The present petition is disposed of accordingly. The decision so taken by respondent No.3 be conveyed to the petitioners forthwith.

(AUGUSTINE GEORGE MASIH)
JUDGE

(ASHOK KUMAR VERMA)
JUDGE

04.11. 2020
Harish

Whether speaking/reasoned:	**Yes/No**
Whether Reportable:	**Yes/No**