

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP-23588-2016 (O&M)
Reserved on: 31.10.2019
Date of decision:07.01.2020**

1) M/s Raghav Woollen Mills Pvt. Ltd.

.....Petitioner

versus

Union of India and others

....Respondents

CWP-23611-2016 (O&M)

2) M/s PDG Wool Traders

.....Petitioner

versus

Union of India and others

....Respondents

**CORAM:Hon'ble Mr. Justice Jaswant Singh
Hon'ble Mr. Justice Girish Agnihotri**

Present: Mr. Jagmohan Bansal, Advocate for the petitioner (in both cases).

Mr. Sunish Bindlish, Advocate for the respondents.

GIRISH AGNIHOTRI, J.

(1) This order shall dispose of two writ petitions namely **CWP-23588-2016** titled as **M/s Raghav Woollen Mills Pvt. Ltd. vs. Union of India and others** and **CWP-23611-2016** titled as **M/s PDG Wool Traders vs. Union of India and others**. The facts have been taken from CWP-23588-2016.

(2) The petitioner namely **M/s Raghav Woollen Mills Pvt. Ltd.**, having its works/Office at Ludhiana, has one of the activities of importing

different kinds of acrylic waste from different countries including Germany/Canada.

(3) The petitioner has *inter alia* prayed to issue writ of certiorari to quash panchnama dated 11.08.2016 (Annexure P-3), whereby, respondent No.2 has seized imported stock of the petitioner. It has been further prayed that respondent No.2 be directed to un-conditionally release the aforesaid material of the petitioner lying in their factory.

(4) Mr. Jagmohan Bansal, learned counsel for the petitioner, by making reference to pleadings in the writ petition, *inter alia* submits that in the year 2016, as usual, the petitioner had imported synthetic waste during the period of few months of the year 2016. It is contended that Bill of Entry (hereinafter referred as B/E) was filed by the petitioner. The Custom Officers drew samples of the material and had also sent the same for testing to their laboratory(s). It is positive case of the petitioner that simultaneously, the Custom Officers permitted clearance of goods under provisional assessment, in terms of Section 18 of the Customs Act, 1962 (hereinafter called as the 'Act'). The petitioner has then given a table in Para-7 of the writ petition to demonstrate that the petitioner was required to furnish bond along with Bank Guarantee (for short "B/G"). For ready reference, table is reproduced hereinunder:-

Sr.No.	B/E No. & Date	Quantity	Rate declared (per kg)	Rate Assessed (Per kg)	Description	B/G
1	5030221 dt. 25.04.2016	20984	0.85	0.85 (EUR)	Synthetic Waste (Acrylic Soft Wate)	21.04.2016

2	4863068 dt. 01.04.2016	22595	0.85	0.85 (EUR)	Synthetic Waste (Acrylic Soft Wate)	07.04.2016
3	4560424 dt. 14.03.2016	22519	0.88	0.88 (EUR)	Synthetic Waste (Acrylic Soft Wate)	11.03.2016
4	4027914 dt. 25.01.2016	15835	0.65	1.00 (USD)	Dyed Acrylic Soft Waste	06.01.2016
5	441849 dt. 29.02.2016	15429	0.65	0.90 (USD)	Dyed Acrylic Soft Waste	24.02.2016

(5) It is then the case of the petitioner that the respondents have illegally on 11.08.2016 seized the complete record of the petitioner, *inter alia* qua the aforesaid B/E. The petitioner is only having details of import and a copy of Bank Guarantee, which the petitioner has attached as Annexures P-1 & P-2, which were returned after framing final assessment under Section 18 of the Act and cancellation of Bond. The petitioner has made some pleadings regarding the description of goods as synthetic waste (acrylic soft waste) and also as died acrylic soft waste. However, for the sake of brevity, without making detailed reference to the said pleading, it is deemed appropriate to notice that custom authorities, after the receipt of positive report from the laboratory, cancelled the Bond and returned the bank guarantee, but has never supplied copy of the Test Report (which vindicated the declaration of description of goods). The declared value was USD 0.65 per kg, whereas, the respondent provisionally and thereafter finally assessed USD 1.00 per kg in case of one Bill of Entry and USD 0.90 per kg, in case of another Bill of Entry.

The petitioner further submits that on 11.08.2016, the staff of Directorate of Revenue Intelligence, searched office and business premises

of the petitioner and even the residence of Director of the petitioner. The alleged reason of search as informed by the authorities was that the petitioner has mis-declared description and value of imported goods at the time of filing aforesaid Bills of Entry and had short paid duty as compared to their actual liability, although custom duty liability had already been finally assessed by the custom authorities on the basis of Test Reports received from official laboratories.

(6) The basic/primary arguments of the petitioner is that the Directorate of Revenue Intelligence (hereinafter called as 'DRI'), has in fact no jurisdiction to draw the samples, after clearance of goods in view of the mandate of Section 144 of the Customs Act, 1962, which is for ready reference reproduced hereunder:-

*“144. **Power to take samples**-(1) The proper officer may, **on the entry or clearance of any goods or at any time while such goods are being passed through the customs area**, take samples of such goods in the presence of the owner thereof, for examination or testing , or for ascertaining the value thereof, or for any other purpose of this Act.*

(2) After the purpose for which a sample was taken is carried out, such sample shall, if practicable, be restored to the owner, but if the owner fails to take delivery of the sample within three months of the date on which the sample was taken, it may be disposed of in such manner as the Principal Commissioner of Customs or Commissioner of Customs may direct.

(3) No duty shall be chargeable on any sample of goods taken under this Section which is consumed or destroyed during the course of any test or examination thereof.”

Emphasis Supplied.

It has not been disputed between the parties that admittedly the samples can only be and were drawn under Section 144 of the Act. It is further evident that samples can be drawn only before the imported goods are cleared/removed from the customs area.

(7) Respondents No.1 & 2 have filed the written statement dated 16.12.2016 and after the written statement, additional reply dated 19.10.2018 has also been filed, wherein, effort has been made to demonstrate that the DRI Officers had authority to take action under the notification from time to time so as to authorise drawing of samples even subsequent to clearance of goods. The stand taken by the respondents can be summed up as under:-

“It has been pleaded that now keeping in view the fact (as has been revealed by the petitioner by way of filing the writ petition and vide its letter dated 05.12.2016) that the material detained from their premises on 11.08.2016 had been actually imported by the petitioner vide five Bills of Entry, decision has been taken to draw fresh representative samples from each import consignment for re-testing from CRCL, New Delhi. The respondents further come on to state that one sample drawn earlier, did not seem to suffice the purpose in changed scenario.”

(8) We have heard learned counsel for the parties and are persuaded to accept the legal plea raised by the petitioner.

(9) As per the Scheme of the Customs Act 1962, an importer in terms of provisions of Section 46 has to file Bill of Entry for the clearance of imported goods. The Proper Officer/Custom Authorities, if upon examination is satisfied with the declaration *qua* the description and valuation of the goods made by an importer in the Bill of Entry, may frame assessment under Section 17 of the Customs Act, 1962, and upon payment

of duty, resulting into clearance of goods, whereas in case of doubt with respect to description or value of goods, provisional assessment under Section 18 of the Customs Act, 1962, may be made and the goods be cleared subject to terms and conditions including final assessment. The Proper Officer on receipt of test reports or any other information required has to then frame a final assessment under Section 18(2) of the Customs Act, 1962.

In the present case, at the time of clearance of imported goods, provisional assessment was framed as the declared description of imported goods was in doubt. The Proper Officer in terms of the provisions of Section 144 of the Customs Act, 1962, drew samples, while permitting the clearance of goods, after provisional assessment under Section 18 of the Customs Act, 1962, against a bond supported with a bank guarantee. Subsequently, upon receipt of the test report(s) from official laboratories vindicating the description of goods as disclosed by the petitioner in his Bill of Entry, the Proper Officer framed final assessment in terms of the declared description and valuation of goods and the customs duty already paid by the petitioner. Consequently, the Proper Officer cancelled the bond and returned the bank guarantee furnished earlier for securing the additional demand, if any.

(10) The positive case of the petitioner is that once the goods were cleared and had reached the premises of the petitioner, it gets mixed with the other goods. Therefore, once all the transactions/goods cleared from custom area as noticed in the table given in the foregoing paras, were

between January 2016 to April 2016, the action to draw fresh samples on/after 11.08.2016 from the factory premises, is totally without jurisdiction, unwarranted and is in violation of Section 144 of the Act. The action of the respondents, vide which, two panchnama(s) dated 11.08.2016 (Annexures P-3 & P-6), whereby, the respondents seized the entire goods (lying in the factory premises) is also consequentially without jurisdiction, moreso, when after the receipt of Test Reports from the official Laboratories, the final assessment of custom duty was framed.

(11) Counsel for the petitioner relies on the judgment of the Hon'ble Supreme Court of India in *M/s Grasim Industries Ltd vs. Collector of Customs, Bombay, 2002(4) SCC 297* to convass that where the context and the object and mischief of the enactment do not required restricted meaning to be attached to words of general import it becomes the duty of the Courts to give those words their plain and ordinary meaning. The provision of the statute i.e. Section 144 as reproduced above, clearly refers to the intention of the framers of the statute. In Section 144, it has been clearly provided that the proper officers may, on the entry or clearance of any goods or at any time while such goods are being passed through custom area, take samples of such goods for examination thereof and once imported goods stand assessed to custom duty and removed/cleared from the custom area, no fresh samples of such imported goods can be redrawn from any other area.

(12) In the present case, after the release of imported goods approximately by April 2016 from the custom area, there was no power with the authorities, much less under Section 144 of the Act, to draw samples at a

subsequent stage i.e. on 11.08.2016 from the factory premises.

(13) In view of our findings noticed above, we are of the considered opinion that both the writ petitions deserve to be allowed with the following directions:-

- (i) The Panchnama(s) dated 11.08.2016 (Annexure P-3)/ 06.10.2016 (Annexure P-8), effecting the seizure of imported stock of the petitioner(s) are quashed.*
- (ii) Respondent No.2/DRI is directed to release the seized material of the petitioners and also return the resumed documents of the petitioners.*
- (iii) The needful as directed in direction No(ii) qua both the petitioners, be done forthwith, maximum within two weeks from the date of receipt of certified copy of this order, failing which, the Competent Authority shall make itself liable for being hauled up in contempt proceedings and imposition of exemplary costs.*
- (iv) No order as to costs.*

(JASWANT SINGH)
JUDGE

(GIRISH AGNIHOTRI)
JUDGE

07.01.2020
anju rani

Whether speaking/ reasoned:
Whether Reportable:

Yes/No
Yes