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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 11586/2019

% <u>Decided on: 30th January, 2020</u>.

M/S DIAMOND EXPORT (THROUGH: ITS PARTNER- MR. JAYANT GURJAR) ..... Petitioner

Through: Mrs.Anjali Jha Manish, Adv. with Mr.Priyadarshi Manish, Ms.Jasmeet Kaur, Advs.

Versus

COMMISSIONER OR CUSTOMS (EXPORTS) ICD, TUGHLAKABAD, NEW DELHI AND ORS ..... Respondents

Through: Mr.Amit Bansal, Adv. with Mr.Aman Rewaria, Ms.Vipasha Mishra, Mr.Akhil Kulshreshtha, Advs. for R-1&2.
Mr.Aditya Singla, Adv. for R-3/DRI.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE C.HARI SHANKAR

<u>JUDGMENT</u>

: **<u>D.N.PATEL, Chief Justice (Oral)</u>**

1. This writ petition has been preferred with the following prayers:-

"In view of the aforementioned facts and circumstances it is therefore most respectfully prayed that this Hon'ble court may be pleased to:

(a) Issue a writ, order or direction in the nature of mandamus to release the export consignment covered under shipping bill No.4487348 dated 28.05.2019 unconditionally for the purpose of export as no seizure has been made and the goods have been detained from 10.06.2019; and/or

(b) Issue a writ, order or direction in the nature of certiorari to set aside/modify the conditions provided in the

communication bearing C.No.VIII/ICD/6/TKD/SIIB-Exp./Misc./DRI Indore/109/ 19/Pt.-1 dated Nil but signed on 09.10.2019; and/or

(c) *Issue a writ, order or direction in the nature of mandamus to the Respondents to de-freeze the bank account of the Petitioner bearing Account No. 10043458285 situated at ICICI Bank, Plot N0.5I-E/B, Saket Nagar, Indore; and/or*

(d) *Issue a writ, order or direction in the nature of mandamus to the Respondents to issue detention certificate against shipping bills bearing No.4487348 dated 28.05.2019;*

(e) *Grant cost of the petition;"*

2. Having heard the learned counsel for the parties and looking to the facts and circumstances of the case, it appears that the goods in question are mixed cotton printed handloom bed sheets. The value declared in the shipping bills by the petitioner for the goods to be exported was at Rs.2,20,72,852/-. The goods were detained by the respondent authorities for the over-valuation. Samples were drawn and sent to Ahmedabad Textile Industrial Research Association and the value of the goods, after getting the report from the aforesaid institution, was found @ Rs.22,28,700/-. The goods were seized on 31st August, 2019 under Section 110 of the Customs Act, 1962.

3. Respondent No.1 has filed counter affidavit and paragraphs 4 and 5 of the same reads as under:-

"4. That regarding provisional release of the goods covered by the said shipping bill, respondent no. 3, had intimated that they have no objection if the seized goods of the exporter are provisionally released after safeguarding revenue on furnishing of suitable bank guarantee and bond in terms of Board's Circular No. 0l/2011-CDS dated 4.1.2011.

5. That, accordingly, the answering respondent, had given an option to the petitioner for provisional release of goods on submission of bond of 100% of FOB value of goods and bank guarantee of 5% of FOB value of goods on 09.10.2019. However, no response has been received from the petitioner till date."

4. Respondent No.3 has also filed a counter affidavit wherein in paragraphs D, E and G, it is stated as under:-

"D. Therefore, in exercise of the powers conferred under Section 110 (1) of the Customs Act, 1962, the goods under the afore-mentioned Shipping Bill were duly seized on 31.08.2019 under the reasonable belief that they were to be improperly exported by way of mis-declaration (overvaluation).

E. Summons were issued to Mr. Jayant Gurjar (Partner of the petitioner firm) and his statement has been recorded under Section 108 of the Customs Act, 1962 on 3 occasions, first on 06.07.2019, 27.09.2019 and then on 07.01.2020, whereby he admitted overvaluation of goods to be exported and till date no retraction of statement has been filed.

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G. The answering respondent vide letter dated 27.09.2019 from Shri Jayant Gurjar, Partner of M/s. Diamond Export has come to know that a request was made by the Petitioner for provisional release of goods and the same was allowed by the concerned authority, on the fulfillment of following 3 conditions:

i) Submission of 1000/0 of FOB value of Shipping Bill.

ii) Submission of Bank Guarantee of 50/0 of total FOB.

iii) Submission of undertaking that the petitioner will not contest the description and quality of goods covered under the said Shipping Bill.

It is submitted that since the subject goods have been found to be overvalued, they can only be provisionally released after safeguarding the interest of revenue on fulfillment of the said conditions in terms of Board's Circular No. 01/2011 Cus. dated 04/01/2011."

5. In view of the aforesaid submissions, it is clear that the goods have already been ordered to be provisionally released upon certain conditions and, therefore, we see no reason to entertain this writ petition.

6. We may note that the Supreme Court has in its recent decision in ***State of Uttar Pradesh vs. Kay Pan Fragrance Pvt. Ltd.*** **2019(31) GSTL 385 (SC)** has criticized the practice of writ Courts directing release of the seized goods where the statute provides for provisional release.

7. It is further submitted by learned counsel for the respondents that the bank account of the petitioner has also been de-freezed on 1st November, 2019.

8. Learned counsel appearing for the petitioner has argued about the conditions imposed for the provisional release of the goods. Since, an order of the provisional release is appealable order, hence also, we see no reason to entertain this writ petition.

9. Accordingly, the writ petition is dismissed.

CHIEF JUSTICE

C.HARI SHANKAR, J

JANUARY 30, 2020/*'anb'*