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

% *Date of Decision: 07.07.2020*

\+ W.P.(C) No.3896/2020

M.C. OVERSEAS THROUGH ITS PROPRIETOR
SH. MANU CHOPRA & ANR. ..... Petitioners
Through: Mr. Aashish Batra, Advocate

versus

COMMISSIONER OF CUSTOMS
(PREVENTIVE & ANR.) ..... Respondents
Through: Mr. Harpreet Singh, Sr. Standing Counsel for the Respondents

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE PRATEEK JALAN

JUDGMENT

: **D.N. PATEL, Chief Justice (*Oral*)**

1. Proceedings of the matter have been conducted through video conferencing.

2. This petition has been preferred with the following reliefs:

> *(i) Issue a writ of mandamus or any other appropriate writ, order or direction directing the respondents to forthwith (i) grant refund of deposit of Rs.11,70,865 made by the Petitioner No.1 vide TR-6 challan dated 07.11.2012 and pre-deposit of Rs 1,50,000 made by the Petitioner No.2 vide TR-6 challan No. 199 dated 20.06.2018 along with interest as applicable; (ii) De-freezing of Current Account No: 52905086356 held by*

the petitioner No.1 in Standard Chartered Bank, Karol Bagh Branch; and (iii) release goods seized from the Petitioner No.1 on 16.03.2012 and recorded vide Panchnama dated 19.09.2012 and Supurdaginama dated 16.03.2012 and 19.09.2012, in furtherance with the Final Order No.51676-76/2019 dated 23.12.2019 passed by the Customs, Excise And Service Tax Appellate Tribunal, New Delhi In Appeals No.E/52186-52187/2016-CU (DB) filed by the petitioners herein;

(ii) to pass such other or further order which this Hon'ble Court may deem fit and proper in the interest of justice."

3. Having heard the counsel for both the parties and looking to the facts and circumstances of the case, it appears that originally the goods were imported by the Petitioner No.1, i.e. O-General brand Air conditioners. Due to the allegations that the imported goods were mis-declared as their complete description was not given and the invoice declared at under-valued price, which is in violation of the Customs Act, 1962, search was carried out and the goods were detained vide supurdginama dated 16.03.2012 and seized under Section 110 of Customs Act, 1962 on 30.03.2012. The goods in question were handed over to the manager of the importer (Petitioner No.1), namely, Mr. Ajit Singh. It also appears from the facts of the case that after the seizure of the goods in question, for the allegation of under-valuation/mis-declaration of goods, a show cause notice dated 14.03.2013 was issued to the Petitioners due to the petitioners indulging in fraudulent import practices with a mala fide intention to evade leviable customs duty. Thereafter there was adjudication by Order-In-Original (O-I-O) dated 31.12.2013 which was challenged before the CESTAT by the owner of the

goods.

4. The CESTAT vide order dated 15.12.2017 remanded the matter. Again, Order-In-Original was passed on 04.06.2018.

5. Thereafter this petitioner approached CESTAT by way of an appeal and CESTAT allowed the appeal of this petitioner vide order dated 23.12.2019 (Annexure-P4 to the memo of this writ petition). In view of the fact that the appeal preferred by this petitioners was allowed by CESTAT vide order dated 23.12.2019 and as much time has lapsed thereafter, the present petition has been preferred with the reliefs mentioned above.

6. In view of the reliefs prayed, the following three grievances are ventilated by the petitioners:

(i) For refund of the amount of Rs.11,70,865/- deposited by Petitioner No.1 vide TR6 Challan dated 07.11.2012 and refund of Rs.1.5 lakh deposited by Petitioner No.2 vide TR6 Challan No.199 dated 20.06.2018 along with interest in accordance with law.

(ii) De-freezing of the Current A/c No. 52905086356 held by Petitioner No.1 in Standard Chartered Bank, Karol Bagh Branch; and

(iii) For release of the seized goods.

6. Learned counsel appearing for the respondent fairly submitted that for the refund of the aforesaid amounts, two letters dated 06.03.2020 and 27.04.2020 have already been issued and certain documents are required to be produced by the petitioners. Learned counsel appearing for the petitioners assured this Court that the requisite documents will be submitted and requested that a time bound schedule may be given to the concerned

respondent authorities to decide the refund in accordance with law.

7. We therefore direct the concerned respondent authorities to decide the claim of refund of the petitioners in accordance with law within a period of four weeks from the date of receipt of the copy of the order of this Court. If the documents as demanded from petitioners are not supplied, even then the respondents shall decide the claim of the refund in accordance with law.

8. So far as the second prayer is concerned, which is about the de-freezing of the Current Account of the petitioner No.1, it is fairly submitted by the counsel for the respondents that they have already written a letter to the concerned bank for de-freezing the bank account. Thus, the grievance about the de-freezing of account does not survive.

9. So far as the third prayer for the release of the goods which were seized is concerned, it is submitted by the counsel for the respondents that the goods in question were seized after the search was carried out much earlier in time, i.e., on 30.03.2012 and the said goods were kept in custody of the manager of the petitioner No.1, i.e. in the custody of Mr. Ajit Singh. It appears that there is some unlawful activity by unknown persons and an FIR has also been lodged against Mr. Ajit Singh. Thus, the matter is pending before the concerned Trial Court on criminal side in Delhi and therefore an application has to be preferred by the petitioners for the release of the goods in accordance with the provisions of the Code of Criminal Procedure, 1973. Learned counsel for the Petitioners submitted that the petitioners may be permitted to prefer such application before the concerned Trial Court for the release of the goods in accordance with law.

10. In view of this submission, we hereby grant liberty to the petitioners that upon proper presentation of the application under the Code of Criminal Procedure with proper averments, allegations and annexures for the release of the goods, the said application will be decided by the concerned Trial Court in accordance with law, rules and regulations and on the basis of the evidence on record. As and when the concerned Trial Court allows the release of the goods in favour of the petitioners, the respondents herein have no objection for the release of the goods in accordance with law.

11. Accordingly, the writ petition is allowed in the aforesaid terms.

CHIEF JUSTICE

PRATEEK JALAN, J

JULY 07, 2020
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