$~A-60

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

% **Date of decision: 21.12.2020**

\+ CONT. CAS(C) 1052/2019 & CM No. 18150/2020

M/S ITS MY NAME PVT LTD ..... Petitioner

Through Mr. Divyakant Lahoti, Mr. Manish Kaushi, Ms. Jyoti Taneja and Ms. Madhur Jhavar, Advocates.

versus

VIVEK CHATURVEDI & ORS. ..... Respondents

Through Mr. Harpreet Singh, Sr. Standing Counsel for DRI.
Mr. Venus Mehrotra, Advocate for R-2 & 3.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JYOTI SINGH, J. (ORAL)

Hearing has been conducted through Video Conferencing.

1. Present contempt petition has been filed alleging non-compliance of the order passed by CESTAT dated 13.11.2019. Operative part of the order is as under:-

> *"30. We also find that under the facts and circumstances, the appellant is an established business concern registered with the Customs dept, DGFT, Income Tax, GST, etc. Due to seizure of almost the whole working capital (Goods, raw material, W.I.P.), for over 6 months, the appellant is facing difficulty of livelihood, it's workmen, and others too. The appellant is also incurring regular fixed cost or establishment cost, unable to fulfill its time-bound export*

obligation, resulting in Irreparable loss, and civil consequences. The balance of convenience lies in allowing provisional release in favour of the appellant. We thus allow provisional release on the following terms:-

(i) Bond for full value of the seized goods
(ii) The bond be backed by Bank Guarantee of Rs. 1.25 crores, with auto renewal clause in favour of the revenue authority.

31. Subject to fulfilment of the stipulated conditions, the revenue Authority is directed to release the detained/seized goods forthwith, or within four working days of the appellant fulfilling the stipulated two conditions."

2. Respondents filed an appeal against the said order before the Division Bench of this Court and the Court modified the order of CESTAT vide order dated 01.06.2020, relevant part of which is as follows:-

"87. Resultantly, the substantial questions of law, framed vide our order dated 29th January, 2020, and reproduced hereinabove, are answered thus:

(i) xxx xxx xxx

(ii) Question (iii) is answered by upholding the decision, of the learned Tribunal, to release, provisionally, and forthwith, the gold, gold jewellery and silver, seized from the warehouse premises of the respondent, as well as 25400.06 grams of gold jewellery, covered by Bill of Entry No. 107190 dated 17th April,2019, on furnishing of a bond, by the respondent, covering the entire value of the said goods, along with a Bank Guarantee for Rs. 10 crores, containing an auto-renewal clause. However, the direction for release of 25299.68 grams of gold jewellery, the

Bill of Entry in respect of which was unsigned by the respondent as well as by the Customs Import Clerk, unregistered and unaccompanied by any Job ID No., is quashed and set aside.

(iii) Needless to say, there,shall be no misuse or illegal diversion of the gold, gold jewellery and silver, being provisionally released to the respondent. For this purpose, the premises of the respondent would be kept open for inspection by the appellant, at all points of time, and all utilization/sale of the gold, gold jewellery or silver shall be duly accounted for.

We direct that weekly account statements, in that regard, shall be furnished, by the respondent, to the appellant."

3. Against the said order of the Division Bench, the Respondents herein approached the Supreme Court and relevant part of the order in Special Leave to Appeal (C) No. 10472/2020 dated 01.10.2020 is as under:-

"4. We are of the considered view that the quantum of the bank guarantee which has been directed to be furnished by the High Court, should be enhanced from Rs 10 crores to Rs 15 crores. Mr Salve has stated on instructions that he has no objection to an enhancement of the quantum of the bank guarantee. We accordingly modify the order of the High Court by directing that the quantum of the bank guarantee shall stand enhanced to Rs 15 crores. The other conditions which have been imposed by the High Court shall continue to govern."

4. Reading of the order passed by the Supreme Court shows that the order of the CESTAT as modified by the Division Bench of this Court

has been further modified by enhancing the Bank Guarantee required to be furnished by the Petitioner herein from Rs. 10 Crores to Rs. 15 Crores.

5. Mr. Divyakant Lahoti learned counsel for the Petitioner submits that the Petitioner has already furnished a Bank Guarantee in the sum of Rs. 3.16 Crores with the Respondents and the same may be returned in original, under a covering letter discharging the Bank Guarantees. Petitioner will thereafter furnish a Bank Guarantee in the sum of Rs. 15 Crores as directed by the Supreme Court.

6. Mr. Harpreet Singh appearing for Directorate of Revenue Intelligence, on instructions from Mr. Piyush Sharma, Deputy Director, who is present in Court, submits that the Bank Guarantee in the sum of Rs. 15 Crores is to be furnished in the office of Principal Commissioner of Customs (Preventive), New Delhi. He further submits that the original Bank Guarantees earlier furnished by the Petitioner are available in his office and can be collected by the Petitioner.

7. I have heard the learned counsels for the parties.

8. In view of the order passed by the Supreme Court, the Petitioner is required to furnish a Bank Guarantee in the sum of Rs. 15 Crores, pursuant to which the Respondents are required to release the seized goods in terms of the order of CESTAT dated 13.11.2019 as modified by the Supreme Court.

9. It is thus open to the Petitioner to furnish a Bank Guarantee in the sum of Rs. 15 Crores to the satisfaction of the Competent Authority. The Competent Authority shall thereafter forthwith release the seized goods to

the Petitioner, provisionally, on furnishing the requisite Bond as directed by CESTAT.

10. Contempt petition is disposed of along with the pending application in the above terms.

JYOTI SINGH, J

DECEMBER 21, 2020 /yo