

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-13169-2021

Date of decision: 16.08.2021

M/s Ishwar Steel Corporation

.....Petitioner

versus

Union of India and others

....Respondents

CORAM: Hon'ble Mr. Justice Ajay Tewari
Hon'ble Mr. Justice Girish Agnihotri

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

Mr. Tajender Joshi, Advocate for the respondents.

AJAY TEWARI, J. (Oral)

Taken up through video conferencing.

On 09.08.2021, the following order was passed:-

*“Today, reply on behalf of the respondents has been filed.
The same is taken on record.*

In this case, on 01.07.2021, some containers of scrap imported by the petitioner were inspected and detained. The reason was that though most of the items were actually scrapped, there were 39 New Radio Frequency System Antennas with all the fittings and these were actually brand new and can be used in the mobile towers.

Before us, prayer made in the writ petition is that at least other material be released because the petitioner is incurring heavy demurrage and opportunity costs with delay.

The contention of the respondents on the other hand is that matter is still under investigation and tomorrow it may be found that other material was just used to disguise or camouflaged these 39 antennas and in that event, even other goods were liable to be

confiscated.

Para No.5 of the writ petition is reproduced as under:-

“5. That in terms of the provisions of the Customs Act, 1962 as well as Foreign Trade Policy 2015-2020, whenever any goods namely scrap is being imported, the same are required to be examined by the Pre Inspection Agency duly certified by the DGFT, who shall issue certificate certifying the contents of the material. Annexed hereto is the copy of pre inspection certificate dated 26.03.2021 annexed as Annexure P-3.”

We put to learned counsel for the respondents as to whether any communication was made to the agency namely “Tubby Impex Private Limited”, he seeks short adjournment to ascertain whether any enquiry was made from them. Further in the reply, it has been stated that even as regards the antennas, a letter has been written to the Wireless Planning & Coordination Wing, Ministry of Telecom, reply of which is still awaited. It is not clear when the letter was written.

Mr. Tajender Joshi, Advocate for the respondents, states that they had issued notice to the petitioner on 19.07.2021 and the petitioner appeared before the authorities only on 02.08.2021, but in our opinion, as regards above two aspects, there was no requirement for the petitioner to appear before the authorities and the authorities had to take a decision on the above two aspects unilaterally.

Adjourned to 13.08.2021.

Let the details be given on or before the next date of hearing.”

Today, learned counsel for the petitioner has further stated that the petitioner is ready to pay whatever is demanded by the respondents and to submit bond for the value of goods mentioned in that order but was praying for provisional release as the petitioner is incurring unnecessarily heavy

demurrage.

Reliance has also been placed upon the judgment passed by this Court in ***CWP-3786-2011 titled as M/s Bajrangbali Trading Company vs. Union of India and another***, decided on 17.03.2011, particularly on para 9 of the judgment which is to the following effect:-

.....“Accordingly, we allow this petition and direct the respondents to pass an order of provisional release forthwith subject to such conditions as may be permitted under the law. If the petitioner deposits the differential duty, as may be assessed, the goods may be released, unless the same are held to be prohibited goods. If it is found that the petitioner will be liable to pay any other fine or amount, the petitioner will furnish personal bond to secure such payment. The order may be passed within three days from the date of receipt of a copy of this order.”

Learned counsel Mr. Joshi very fairly states that in view of the order passed on 09.08.2021 and the undertaking given by the petitioner today, he may move a formal application for provisional release which would be decided in accordance with law within a week.

As regards the other material, respondents are directed to finalize the investigation and pass appropriate order in accordance with law

Writ petition is disposed of accordingly.

(AJAY TEWARI)
JUDGE

(GIRISH AGNIHOTRI)
JUDGE

16.08.2021/anju rani

Whether speaking/ reasoned:

Yes//No

Whether Reportable:

Yes/No