$~16

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

% *Date of Decision : 22nd September, 2021*

\+ W.P.(C) 7959/2021 & CM APPL.24735/2021 (*stay*)

HEMOGENOMICS PVT LTD ..... Petitioner

Through: Mr. Tarun Gulati, Senior Advocate with Mr. Sandeep Chilana, Mr. Devang Bhasin, Mr. Priyojeet Chatterjee & Mr. Shekhar Sharma, Advocates

versus

PRINCIPAL COMMISSIONER OF CUSTOMS ACC IMPORTS & ORS. ..... Respondents

Through: Ms. Sonu Bhatnagar, Senior Standing Counsel with Ms. Venus Mehrotra, Adv. for R-1 to R-3 along with Mr. Asim Anand, Officer of the respondents

Mr. Alok Singh, Senior Panel Counsel for R-4

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

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

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

*"a. Issuance of writ of mandamus or any other appropriate writ(s), order(s) or direction(s) thereof directing the Respondent No. 2 to allow the Petitioner to file the self-assessed Bill of Entry ("**BOE**") for 'Procleix Ultrio Elite Assay Kit' imported under invoice nos. 267 and 268 dated 23.07.2021 as well as future consignments thereof as per the claims of the Petitioner and pass mandatory speaking order under Section 17(5) of the Customs Act, 1962 ("**Act**"), after*

following principles of natural justice and providing opportunity of personal hearing to the petitioner;
b. issuance of writ of mandamus or any other appropriate writ(s), order(s) or directions in the nature thereof directing the Respondents to pass mandatory speaking and reasoned re-assessment order as contemplated under Section 17(5) of the Act qua BOE No.4658078 dated 13.07.2021, BOE Nos. 4692957, 4692960 dated 15.07.2021, BOE No. 4735948, 4735810 dated 19.07.2021 & BOE No. 4747199 dated 20.07.2021 after following principles of natural justice and providing opportunity of personal hearing to the Petitioner;
c. issuance of writ of mandamus or any other appropriate writ(s), order(s) or direction(s) in the nature thereof directing the Respondent authorities to pass provisional assessment order under Section 18 of the Act during the pendency of re-assessment proceedings and allow provisional clearance of goods imported vide invoice number on 267 and 268 dated 23.07.2021 on furnishing reasonable security as the proper officer may deem fit, keeping in mind public importance of the imported goods;
d. issuance of writ of mandamus or any other appropriate writ(s), order(s) or direction(s) in the nature directing the Respondent authorities to allow future imports to be cleared on the basis of provisional assessment on the basis of reasonable security without insistence of deposition of 100% disputed customs duty demand till final crystallization of demand under the law;
e. Pass any other order(s)/ direction(s) as may be deemed fit in the facts and circumstances of the case by this Hon'ble Court."

2. We have heard learned counsel appearing for both sides at length. It is submitted by the learned Senior Counsel appearing for the petitioner that the petitioner is the importer of the goods i.e. *Procleix Ultrio Elite Assay Kit*. For these goods Bill of Entries have already been filed as stated in the memo of the writ petition. For ready reference, details of Bill of Entries and

the date on which it was filed reads as under:

"

S. No.	Date	Bill of Entry No.	Petitioner compelled to declare goods under HSN 38220090. Amount of differential customs duties paid by the Petitioner under protest in INR
1	15.07.2021	4692957	1,25,34,739
2	15.07.2021	4692960	1,03,966
3	19.07.2021	47335948	2,67,640
4	19.07.2021	4735810	1,181
5	20.07.2021	4747199	1,09,82,462

"

3. Learned Senior Counsel appearing for the petitioner has vehemently argued that the respondents are sitting tight upon the Bill of Entries filed by the petitioner. Learned Senior Counsel further submitted that it is the duty of the concerned respondent authorities under Section 17 of the Customs Act, 1962 to pass an order under Section 17(5) of the Customs Act, 1962.

4. Learned Senior Counsel further submitted that looking to the nature of the goods, the petitioner is in need of the goods as the same are to be utilized for the prevailing Covid-19 situation in India. Looking at the urgent need of the goods, the petitioner had initially prayed for an order to be passed by the respondent for provisional release of the goods.

5. We have also heard the learned Senior Standing Counsel for the respondents No. 1 to 3 who submitted that a detailed speaking order has already been passed for provisional release of the goods on 1st September,

2021, which has been brought on record in this writ petition. The said order is appealable before Commissioner (Appeal). The aforesaid order is a detailed speaking order passed after giving an opportunity of being heard on 23rd August, 2021.

6. In view of these submissions, the provisional release of the goods can be challenged by the petitioner in accordance with law before the appropriate forum.

7. However, looking to the facts of the case, especially the fact that no order has been passed under Section 17(5) of the Customs Act, 1962, we hereby direct the concerned respondent authority to pass a speaking order under Section 17(5) of the Customs Act, 1962 upon the Bill of entries which are mentioned hereinabove which have already been filed by the importer – petitioner in the month of July, 2021. The petitioner shall cooperate during the hearing with the respondents for passing an order under Section 17(5) of the Customs Act, 1962. This order shall be passed within a period of two weeks from today. The Officers of the respondents are also present on video conference hearing which has taken place today.

8. With these observations, this writ petition is hereby disposed of. Pending application also stands disposed of.

CHIEF JUSTICE

AMIT BANSAL, J

SEPTEMBER 22, 2021

ns