

11-01-2022
Item No.1
Subrata

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

WPA No.20577 of 2021
M/s. Emami Agrotech Limited
-vs-
The Union of India & Ors.

Mr. Abhrotosh Majumdar	
Mr. Pramit Bag	
Mr. Rahul Dhanuka	
Mr. Harsh Choudhary	...for the petitioner
Mr. Sujit Mitra	...for the Union of India
Mr. Bhaskar Prosad Banerjee	
Mr. Sukalpa Seal	...for the Customs

Heard learned advocates appearing for the respective parties.

In this writ petition, petitioner has challenged the impugned orders dated October 27, 2021 and December 4, 2021 being Annexures P6 and P12 respectively passed by the respondent-Customs authority in connection with import of goods in question.

Case of the petitioner is that it has made an application on October 8, 2021 before the Customs authority concerned for withdrawal of the Ex-bond Bill of Entries in question and reinstate the aforesaid Bill of Entries to warehousing Bills of Entries, details of which will appear from the said application being Annexure P3 at p.127 of the writ petition.

Thereafter, the petitioner made further representations on October 20, 2021 and October 25, 2021 being Annexures P4 and P5 to the writ petition. On the aforesaid representations, the Customs authority passed an

order dated October 27, 2021 (Annexure P6, p.132) rejecting the petitioner's aforesaid application and further on December 4, 2021 (Annexure P12, p.151) communicating that the petitioner's application for cancellation/withdrawal of the Ex-bond in question could not be considered.

Further case of the petitioner is that it is entitled for exemption on the goods in question imported, on the basis of Notification No. 48/2021-Customs dated October 13, 2021 issued by the Ministry of Finance, Government of India which appears on page 139, Annexure P9 to the writ petition, if its applications for withdrawal of Ex-bond Bill of Entries are considered and allowed.

On the other hand, Mr Banerjee, learned advocate appearing for the Customs authority, submits that when the assessment has already been made and duty has been determined and accepted by the petitioner, there is no scope of consideration of the petitioner's application.

When Mr Banerjee was asked whether the impugned assessment/determination of duties is further appealable or any other remedy available against determination or rejection of the petitioner's application for withdrawal of the aforesaid bond for Bill of Entries in question, he could not show any provision for redressal of the petitioner's grievance.

Mr Majumder, learned senior advocate appearing for the petitioner, submits that his client is agreeable to pay 50 per cent of the duty in question in cash and 50 per cent of such duty by way of bank guarantee to protect the interest of the parties.

Considering the respective submission of the parties, I am of the view that the only scope for

consideration in this writ petition is with regard to consideration of the petitioner's application for cancellation or withdrawal of the Ex-bond relating to Bill of Entries in question which, sitting in writ court, I am not inclined to act as an adjudicating authority.

Hence I remand the matter to the respondent concerned to consider the petitioner's application for cancellation/withdrawal of the Ex-bond relating to Bill of Entry in question afresh in accordance with law by passing a speaking order, after giving an opportunity of hearing to the petitioner or its authorised representative, within four weeks from the date of communication of this order.

In the meantime, if the petitioner deposits 50 per cent of the duty in question by cash and the rest 50 per cent by way of bank guarantee, subject to the satisfaction of the authority concerned within seven days from date, the respondent concerned will release the goods in question within 72 hours from making such payment. This payment of cash and bank guarantee will be without prejudice to the rights and interest of both the parties and will be subject to the final outcome of the order to be passed by the respondent concerned on petitioner's aforesaid application.

With the aforesaid observations, WPA No.20577 of 2021 stands disposed of.

Since this writ petition has been disposed of without calling for affidavits, allegations contained therein shall be deemed to have been denied by the respondents.

[Md. Nizamuddin, J]

