ORDER SHEET

WPO 2591 of 2022
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

KUNJAL SYNERGIES PRIVATE LIMITED
VS.
PRINCIPAL COMMISSIONER OF CUSTOMS (PORT) & ORS.

BEFORE:
The Hon'ble JUSTICE MD. NIZAMUDDIN
Date: 20th September, 2022.

Mr. Sudhir Mehta, Mr. Anurag Bagaria, Ms. Riya Debnath,
Advocates for the petitioner.

Mr. K. K. Maiti, Ms. Ekta Sinha, Advocates for the respondent nos.1 & 2.

The Court : This writ petition was heard at length on 15th September, 2022 and a detailed order was passed recording the facts and decision relied upon by the learned counsel appearing for the petitioner which will appear from the said order dated 15th September, 2022.

Facts, in short, are that the petitioner has approached this Writ Court for release of the goods in question provisionally under Section 110A of the Customs Act, 1962 on the basis of the order of the Appellate Authority ordering for release of the goods in question provisionally and the concluding portion of the order of the Appellate Authority dated 10th June, 2022 is quoted hereinbelow:

> "*In view of above discussion and judicial pronouncement the detained/seized goods under Bills of Entry Nos.2202769 dated 01.01.2021 and 2203997 dated 02.01.2021 and Ex-bond Bills of Entry Nos.9681602 dated 24.11.2020, 9721805 dated 27.11.2020,*

9897793 dated 10.12.2020 & 2152531 dated 29.12.2020 are ordered to be released provisionally under section 110A of the Customs Act, 1962 as per the provisions of the Customs Act, 1962."

The petitioner has relied on a decision of the Division Bench of this Court dated 11th /12th August, 2005 in T. No.297 of 2005 [Commissioner of Customs (Port) & Anr. Vs. Texport Electronics Limited] and the petitioner has also relied on a circular dated 3rd March, 2004 issued by the Ministry of Finance (Department of Revenue), Central Board of Excise & Customs, New Delhi and particularly paragraph 2 of the said circular which is quoted hereunder :

"The matter has been examined by the Board. It may be mentioned that in case of classification disputes, by & large, option is given for provisional clearance/assessment, if the inquiries are going to take time. However, the Board desires that a disputed or offending consignment should also not be held up unless its import/clearance is totally prohibited or banned under any law for the time being in force [E.g. PFA, CITES, Weight & Measures Act, etc.] or where prosecution is contemplated. At most, samples should be drawn and consignment should be allowed to be cleared on provisional basis as a matter of right. This will prevent congestion at ports and warehouses. Adequate B.G./security may be taken to safeguard revenue (including possible fine and penalty). In case where it is decided to detain the consignment action should be taken to shift the same to a Customs Warehouse under Section 49 of the Customs Act, 1962 [Board's Circular No. 84/95-Cus., dated 25-7-95 may be referred to – 1995 (79) E.L.T. T12]. "

Mr. Maiti, learned counsel appearing for the respondent Customs authority opposes this writ petition by contending that no relief should be granted to the petitioner for releasing of the goods in question in view of another circular dated 16th August, 2017. He relies on paragraph 2 of the said circular which is quoted hereunder :

> *"While provisional release of seized imported goods under Section 110A of the Customs Act, 1962 may normally be considered by the competent adjudicating authority upon a request made by the owner of the seized goods, provisional release shall not be allowed in the following cases –*
>
> *(i) Goods prohibited under the Costums Act, 1962 or any other Act for the time being in force;*
>
> *(ii) Goods that do not fulfill the statutory compliance requirements/obligations in terms of any Act, Rule, Regulation or any other law for the time being in force;*
>
> *(iii) Goods specified in or notified under Section 123 of the Customs Act, 1962;*
>
> *(iv) Where the competent authority, for reasons to be recorded in writing believes that the provisional release may not be in the public interest."*

Mr. Maiti further submits that the Revenue Department has not accepted the aforesaid order of the Commissioner of Customs (Appeal)/Appellate Authority and has filed the appeal which is pending before the learned Tribunal. When Mr. Maiti was asked to produce any order from the Tribunal to show that the aforesaid order of the Commissioner of Customs (Appeal) has been stayed by the Tribunal, he was unable to produce any such order. Mr. Maiti defends the reasoning and finding of the adjudicating authority.

Considering the submissions of the parties, relevant circulars and the order of the Division Bench of this Court in the case of Texport Electronics Limited (supra) and the order of the Commissioner of Customs (Appeal), I am of the view that defence taken by the respondent Customs authority in opposing the prayer and reliefs sought by the petitioner, is not sustainable for the following reasons :

(i) The adjudication order and the findings in the adjudication order has already been set aside by the Commissioner of Customs (Appeal) and until and unless the order of the Appellate authority is stayed or set aside by any higher forum, the said adjudication order has no force in the eye of law at present and it is an admitted position that till date neither the order of the Commissioner of Customs (Appeal) directing release of the goods in question provisionally has been set aside nor stayed by any higher forum.

(ii) When this Court asked a query from Mr. Maiti as to whether the aforesaid circular dated 3rd March, 2004 issued by the Board is in force or not, to which Mr. Maiti submitted, on instruction, that the said circular is still in force. Mr. Maiti is relying on the aforesaid circular dated 16th August, 2017 where it specifically says that only prohibited and banned goods should not be released and restricted goods may be released provisionally subject to condition. In the instant case the goods in question is neither prohibited nor banned and is only restricted. So there is no bar in releasing the goods in question provisionally in view of the aforesaid circular.

(iii) The aforesaid circular dated 16th August, 2017 upon which Mr. Maiti is relying in opposing the prayer for provisional release of the goods is not applicable in the instant case since that relates to prohibited and banned goods and furthermore that circular does not say anywhere that the same is in supersession of the earlier circular dated 3rd March, 2004.

The Division Bench of this Court in the case of Texport Electronics Limited (supra) has held that even a partial prohibition will not prevent the release of the goods provisionally and there cannot be any bar in releasing the goods if not prohibited in terms of any circular.

In addition, submission of Mr. Mehta is that the goods in question is a perishable goods which is spirit and if it is not released timely, it will perish.

In view of the reasonings and discussions made hereinabove, this writ petition being WPO 2591 of 2022 is disposed of directing the respondent authority concerned to release the goods in question upon furnishing of bank guarantee of Rs.56 lakhs which was determined by the respondent department as a redemption fine and if such bank guarantee is furnished to the respondent authority concerned, the goods in question shall be released within 48 hours from the date of furnishing of such bank guarantee subject to satisfaction of the department and compliance of any other statutory formalities which should be indicated to the petitioner by the respondent concerned.

With these observations and directions, this writ petition stands disposed of.

(MD. NIZAMUDDIN, J.)

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