IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: **08.12.2022**

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.32634 of 2022

M/s.North and South Trading Company
No.15/1, Second Floor, Narayanasamy Street
Pulianthope, Chennai – 600 012
Rep. by its Proprietor M.D.Ifteahar .. Petitioner

Vs.

1. The Addl. Commissioner of Customs (Gr.SC)
New Customs House, Meenambakkam
Chennai – 600 027

2. The Deputy Commissioner of Customs (Gr.SC)
New Customs House, Meenambakkam
Chennai – 600 027 ... Respondents

Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Mandamus directing the respondents herein to release the goods under import, made vide Bill of Entry No.9584135 dated 16.07.2022 which is a Live consignment, by considering the various representations of the petitioner, including the latest representation of the petitioner dated 28.10.2022 in so far as in the said representation, the petitioner had sought for the provisional release of goods in terms of judgment rendered by Hon'ble Supreme Court in the case of Commissioner

Vs. M/s.Navshakti Industries Pvt. Ltd., - 2011 (269) ELT A146 (SC) r/w. The Customs (Provisional Duty Assessment) Regulations, 1963 and Section 18 read with Section 110A of Customs Act, 1962 and also to issue necessary detention certificate in terms of Reg.6(1) of the Handling of Cargos under Customs Area Regulations, 2009, pending any further proceedings by the respondents.

For Petitioner	: Mr.S.Baskaran
For Respondents	: Mr.Sundareswaran Senior Panel Counsel for Customs & GST for R1 and R2

O R D E R

Captioned writ petition pertains to provisional release of a consignment (auto mobile spares) imported by the writ petitioner. It turns *inter alia* on Section 110A of 'the Customs Act, 1962' [hereinafter 'said Act' for the sake of brevity and convenience]

2. Mr.S.Baskaran, learned counsel on record for writ petitioner submits that post filing of captioned writ petition, the second respondent has made an order dated 06.12.2022 bearing reference DIN:2022 1273 MU0000419314, learned counsel has placed before this Court a copy of the order and a scanned reproduction of the same is as follows:

ACC/ASST/BE/OHD/45/2022-GR 5A/O/O PR COMMR-CUS-ACC-CHENNAI

[illegible] / Govt. of India [illegible] / Ministry of Finance [illegible] / Department of Revenue		[illegible] / Phone [illegible] [illegible] / Fax [illegible] [illegible] / Email [illegible]

[illegible] O/O THE PRINCIPAL COMMISSIONER OF CUSTOMS

[illegible] (CHENNAI-VIII) - NEW CUSTOM HOUSE,

[illegible] MEENAMBAKKAM, CHENNAI - 600027

www.[illegible].gov.in

DIN: 20221273MU0000414314 Dated: 06-12-2022

To,

M/s North and South Trading Company,
No. 15/1, 2nd Floor, Narayanasamy St.,
Pulianthope, Chennai – 600 012.

Subject: Provisional Release of goods imported vide BE no. 9584135 dated 16.07.2022- reg.

Gentlemen,

Please refer to the goods imported vide BE no 9584135 dated 16.07.2022 and confiscated vide mahazars dated 22.07.2022 under Section 110(1) of the Customs Act, 1962.

The differential duty calculation details for the mis-declared/ undeclared goods forwarded by DRI are as follows:

Bill of Entry No. & date	value declared in the Bill of Entry(Rs.)	Value ascertained after CE Report(Rs.)	Diff Duty Payable (BCD 15%, SWS 10%, IGST 18%) (Rs.)
9584135 16.07.2022	8,80,556/-	1,64,55,900/-	58,36,081/-
Total	8,80,556/-	1,64,55,900/-	58,36,081/-

The adjudicating authority has approved for the provisional release of the

ACC/ASST/BE/ORDR/45/2022-GR 5A-O/O PR COMMR-CUS-ACC-CHENNAI

I/2022

impugned goods under section 110A of the Customs Act, 1962 subject to compliance of the following conditions.

1. Importer executes a provisional bond for the full estimated value i.e. Rs. 1,64,55,900/- of the confiscated goods.
2. Goods are provisionally assessed at value determined by DRI and duty is paid on this re determined value.
3. Importer furnishes a BG for the following amount for a period of 2 year with auto renewal clause .

a. 25% of differential duty (15% of penalty and 10% of Redemption fine) i.e. Rs 14,59,021/- leviable on the goods being provisionally released,

4. The bond executed by importer shall contain an undertaking that the importer shall pay the duty, fine and / or penalty as may be adjudged by the Adjudicating Authority, subject to appellate provisions under the Act. Further, where security is furnished by way of Bank Guarantee, the Bank Guarantee should contain a clause binding the issuing bank to keep it renewed and valid till final adjudication of the case, or in the event of nonrenewal of Bank Guarantee as above, the guaranteed amount be credited to the Government account by the bank on its own'.

This is issued with the approval of Competent Authority.

MEGHAA GUPTA
DEPUTY COMMISSIONER OF CUSTOMS
GROUP 5A, ACC

Copy to:

M/s Sarvin Comfort Logistics (Customs Broker),
A.M Towers, Old No 239, New No. 36,
Room No. 310, 3rd Floor, Angappa Naicken ST, Mannady,
Chennai – 600 001.

Signed by Meghaa Gupta
Date: 06-12-2022 07:57:00
Reason: Approved

3. In the light of the above development, learned counsel seeks leave of this Court to withdraw the captioned writ petition and makes a plea to preserve the rights of the writ petitioner to assail the condition/s imposed by the second respondent for provisional release qua the aforementioned order. Request acceded to.

Captioned writ petition disposed of as closed albeit preserving the rights of the writ petitioner in the aforesaid manner. There shall be no order as to costs.

08.12.2022

Index: yes/no
Internet:yes
gpa

To

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New Customs House, Meenambakkam
Chennai – 600 027

2. The Deputy Commissioner of Customs (Gr.SC)
New Customs House, Meenambakkam
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M.SUNDAR, J.,

gpa

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