

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 17.01.2023

+ **W.P.(C) 10878/2021 & CM APPL. 668/2023**

M/S FLOOR COVERS

..... Petitioner

versus

PRINCIPAL COMMISSIONER
OF CUSTOMS & ORS.

..... Respondents

Advocates who appeared in this case:

For the Appellant : Mr. Faraz Anees & Ms. Anjali Gupta, Advs.
along with petitioner

For the Respondents : Mr. Aditya Singla, Sr. Standing Counsel,
CBIC
with Mr. Adhishwar Suri, Advocate for R-1,
2 & 3.
Mr. Satish Kumar Sr. Standing Counsel for
R-3.

CORAM
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE AMIT MAHAJAN

JUDGMENT

AMIT MAHAJAN, J

1. The present writ petition has been filed seeking the following reliefs:

“a. Issue a Writ of Mandamus or any other appropriate Writ,

direction or order directing learned Respondents to release the consignment imported under B/E No. 4995142 dated 10.08.2021 and 5030730 dated 12/08/2021.

b. Issue a Writ of Mandamus or any other appropriate Writ, direction or Order directing learned Respondents to either pay themselves or to waive the payment of demurrage detention and any other charges.

c. Issue Rule Nisi in terms of prayers at (a) and (b) above and confirm the same after hearing the parties;

d. Pass ad-interim ex-parte order in terms of prayer at (a) and above;

e. Award cost of this Petition;”

2. It is contended on behalf of the petitioner that the consignment comprising of “Knotted Woollen Carpets” was imported by the petitioners from the United States of America on 10.08.2021. The Bill of Entry being B/E No. 4995142, along with other import documents were submitted by the petitioner with the respondent authorities.

3. On 12.08.2021, another consignment comprising of “Knotted Woollen Carpets” was imported from United States of Emirates and the Bill of Entry being B/E No. 5090730, along with other import documents were submitted by the petitioner to the respondent authorities.

4. It is claimed that the consignment was examined by the Respondent No. 2/ customs and samples were also drawn on

16.08.2021/ 17.08.2021. The consignment was, however, kept on hold on instructions given by Respondent No. 3/DRI to the custom authorities. It is claimed that the petitioner, thereafter, *vide* letter dated 07.09.2021, requested all the respondents to provisionally release the goods. The said request was not processed. The inaction on the part of the respondents led to filing of the present writ petition.

5. Learned Counsel for the petitioner submits that the seizure of goods can only be done in accordance with the provisions of Section 110 of the Customs Act, 1962 (hereinafter referred as “the Act”).

6. He submits that the order can be passed only if the appropriate Officer has reason to believe that any goods are liable to confiscation under the Act. Learned Counsel vehemently contends that no order under Section 110 was ever passed and only on oral instructions given by the Respondent No. 3, the consignment was put on hold.

7. He further submits that even if it is to be presumed that the goods were put on hold by exercising power under Section 110 of the Act, the same cannot be for an infinite period and are subject to adjudication. The goods can be ordered to be provisionally released on an application by the importer under Section 110A of the Act.

8. During the pendency of the present petition, this Court, in its order dated 01.06.2022, had noted that the Respondent No. 3 had placed before the Court, the seizure order passed on 09.02.2022 and the notice thereof to the petitioner by a letter dated 11.02.2022.

9. Learned Counsel for the respondent submits that the detailed investigation has been carried out and it is found that no business activities are being carried out by the petitioner company from the declared premises. He submits that the present case is one of import of mis-declared goods in the name of non-existing entity and is not a genuine import being in violation of Section 7 of the Foreign Trade (Development and Regulation) Act, 1992.

10. He further submits that the order for seizure of the goods was, thereafter, passed on 09.02.2022, which was brought to the knowledge of the Court and is also recorded in the order dated 01.06.2022.

11. The extension of time limit for issuance of Show Cause Notice by a period of six months was also sought, which was granted by the Competent Authority. The Show Cause Notice for the purpose of adjudication was thereafter issued on 11.08.2022. He submits that the Department cannot be faulted for any delay in either passing the seizure order or issuing the Show Cause Notice. The delay has occurred because of non-cooperation of the petitioner.

12. As submitted by the parties, it is not in dispute that the seizure order now stands passed on 09.02.2022. As pointed out by the parties, the request for provisional release of the consignment was also considered and an order dated 20.09.2022, has already been passed, thereby, provisionally releasing the consignment. Whether the goods are required to be confiscated pursuant to the order of seizure or any

other action required to be taken will be decided on adjudication of the Show Cause Notice.

13. In so far as the prayer (b) seeking direction against the respondent to either pay or waive the payment of demurrage during the time the goods were put on hold, is concerned the respondent relied upon the judgment passed by the Hon'ble Apex Court in ***Mumbai Port Trust v. Shri Lakshmi Steels & Ors.; (2018) 14 SCC 317***, which, in somewhat similar circumstances, held as under:

“49. We are, therefore, clearly of the view that even though there may be some delay on the part of DRI and the Customs Authorities, the respondent importers have also been guilty of delaying the matter and, therefore, they cannot claim that they are not liable to pay demurrage and detention charges. We may, however, clarify that the respondent importers are free to approach the Mumbai Port Trust in terms of Section 53 of the Act for exemption and remission of demurrage and other charges and the Board may take a sympathetic view while considering the case of the respondent importers under Section 53.

50. As far as detention charges of the shipping line are concerned, in addition to what we have observed above, we are of the view that the High Court could not in writ proceedings have directed DRI/Customs to pay the detention charges to the shipping line since these were to be paid on the basis of a contract between the respondent importers and the shipping line.”

14. In the present case also, *prima facie*, the petitioner has not responded to the various letters and summons issued by the respondent. Therefore, it cannot be said on the basis of the record available in the present proceedings that the respondents were solely responsible for the delay caused. Therefore, no orders can be passed directing the concerned respondent to pay the demurrage charges, as prayed.

15. The petition is, accordingly, disposed of.

AMIT MAHAJAN, J

VIBHU BAKHRU, J

JANUARY 17, 2023
“SS”

