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

% *Date of Decision: 08.12.2023*

+ **W.P.(C) 15728/2023 and CM Nos.63174/2023 & 63175/2023**

M/S. S K OVERSEAS ..... Petitioner

Through: Mrs Anjali Jha Manish, Mr Priyadarshi Manish and Mr Saksham Garg, Advocates.

versus

UNION OF INDIA & ORS. ..... Respondents

Through: Mr Harpreet Singh, Senior Standign Counsel with Ms Suhani Mathur and Mr Jatin Kumar Gaur, Advocates.

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

VIBHU BAKHRU, J.

1. The petitioner has filed the present petition, *inter alia,* praying as under:

> "(a) Issue the writ of certiorari or any other appropriate writ, order or direction in the nature of declaration, declaring that the impugned Circular No.35/2017-Cus dated 16.08.2017 as ultra vires and violative of Section 151A of the Customs Act, 1962; and/or
>
> (b) Issue a writ order or direction in the nature of certiorari to set aside the order bearing No. GEN / INV / OTH / 360 / 2023-ICP-ATR-Cus-Prev-

Amritsar dated 02.12.2023 (DIN No. 20231275NH0000111D90) passed by the Learned Deputy Commissioner of Customs, Land Customs Station, ICP, Attari, Amritsar;

(c) Grant the cost of the petition;"

2. The issues involved in the present petition are covered by the order passed today in ***W.P.(C) 15729/2023*** captioned ***M/s Shanus Impex v. Union of India and Ors.***

3. In terms of the said order, paragraph 2 of the Circular No.35/2017-Cus dated 16.08.2017 (hereafter '**the impugned Circular**') to the extent it curtails the discretion of the adjudicating authority, was set aside as being *ultra vires* to the provisions of the Customs Act, 1962. In view of the said decision, the petitioner's challenge to the impugned Circular does not survive.

4. The petitioner impugns an order dated 02.12.2023 (hereafter '**the impugned order**') passed by respondent no.6 directing provisional release of the goods on the condition that the petitioner furnish a bond equivalent to the value of seized goods, ₹2,62,05,685/- (Rupees two crores sixty-two lacs five thousand six hundred and eighty-five only) and on making a security deposit of ₹3,14,46,822/- being 120% of the said value.

5. A plain reading of the impugned order indicates that the said conditions were imposed in the light of paragraph 2.1 and 2.2 of the impugned Circular issued by the Central Board of Excise and Customs. Paragraph 2 of the impugned Circular, which indicates the conditions

on which the provisional release of the goods can be granted, was declared as void by a Coordinate Bench of this Court in ***Additional Director General (Adjudication) v. M/s Its My Name Pvt. Ltd.: Neutral Citation No.2020: DHC:2014-DB***. As noted above, paragraph 2 of the impugned Circular to the extent it curtails the decision of the adjudicating authority has been set aside by an order in ***W.P.(C)15729/2023*** captioned ***M/s Shanus Impex v. Union of India and Ors.***

6. In view of the above, since the impugned order has been passed on the basis of paragraph 2 of the impugned Circular, the same is liable to be set aside.

7. Mr. Harpreet Singh, learned senior standing counsel appearing for the respondents submits that the matter be remanded to respondent no.6 to decide afresh.

8. In view of the above, the present petition is allowed. The impugned order is set aside and the matter is remanded to respondent no.6 to decide afresh and the petitioner's application for provisional release of the goods is restored before respondent no.6.

9. Considering that the goods involved are perishable, respondent no.6 is directed to decide the matter afresh and pass a speaking order within a period of four working days from date after hearing the petitioner. The petitioner shall appear before respondent no.6 on 11.12.2023 at 10:30 a.m.

10. The pending applications are also disposed of.

11. Order *dasti* under signature of Court Master.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

DECEMBER 8, 2023
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