

29.07.2024
Sl. No. 15.
D/L.
Mithun
Ct.No.5

WPA 16147 of 2024

**Print Jet Cartridge
Vs.
The Union of India & Anr.**

Md. Salahuddin,
Mr. Shahjahan Hussien,

..for the petitioner.

Mr. Vipul Kundalia,
Ms. Aishwarya Rajyashree

...for Custom Authority.

1. Challenging inter alia the order dated 16th May, 2024 passed under Section 110A of the Customs Act, 1962 (hereinafter referred to as the said Act) the present writ petition has been filed. It appears that by order dated 15th April, 2024 this Court had directed the respondents to take a decision on the petitioner's application dated 31st January, 2024 for provisional release, by passing a reasoned order.

2. Pursuant to the aforesaid, the Additional Commissioner of Customs (Preventive), Commissionerate of Customs (P), West Bengal, Kolkata has passed the order dated 16th May, 2024 thereby allowing the provisional release of the seized goods on the following terms:-

*"(i) Re-export of seized 108 MFD
Printers/Photocopier Machine within one*

month of receipt of this order & reporting the same to the seizing unit.

(ii) Execution of Full Value Bond for Rs.46,95,000/- (Rupees Forty Six Lakh Ninety Five Thousand) only for the seized goods.

(iii) Furnishing of Bank Guarantee/Cash Security of 20% of value of the goods i.e. Rs.9,38,945/- (Rupees Nine Lakh Thirty Eight Thousand Nine hundred and Forty Five) only in lieu of penalty for the seized goods.

M/s. Print Jet Cartridge will give an undertaking that they will pay the duty, fine and/or penalty if any, as may be adjudged by the Adjudicating Authority, subject to the appellate provision under the Customs Act, 1962.

The above Bond and Bank Guarantee/Cash Security for provisional release of the said seized goods as sought for, is to be submitted to the Assistant Commissioner of Customs, Hq Adjudication, CCP, Kolkata for further action in this regard.

If the Bank Guarantee is furnished, the same should contain a clause binding the issuing Bank to keep it renewed and valid till the final adjudication of the case, or in the event of non-renewal of Bank Guarantee as above, the guarantee amount to be credited to the Government account by the bank on its own."

3. According to the petitioner the conditions imposed by the Additional Commissioner of Customs are oppressing and are in conflict with one another.

4. Mr. Kundalia, learned advocate representing the Customs Authority, however, would submit by placing reliance on Section 128 of the said Act that an order passed under Section 110A is an appealable order. Since, the petitioner challenges the conditions imposed in the said order and does not question the authority of the concerned respondent to pass the said order or the procedure adopted, in my view, since the order is an appealable one, the petitioner should not be permitted to pursue the extraordinary remedy without first exhausting statutory remedy. In view thereof, I permit the petitioner to approach the appellate authority under Section 128 of the said Act.

5. If the petitioner files an appeal before the appellate authority within a period of 30 days from today, the appellate authority shall hear out and dispose of the same on merits as expeditiously as possible preferably within a period of four weeks from the date of filing of the appeal.

6. With the aforesaid observation and direction, the writ petition stands disposed of.

7. There shall be no order as to costs.

(Raja Basu Chowdhury, J.)