IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9947 OF 2024

Prime Home Collection (OPC) Ltd.
A registered company carrying on
business at Hariyaon Bhadohi, Sant
Ravidas Nagar, Uttar Pradesh,
India – 221 401 ...**Petitioner**

Versus

1. Union of India
through the Secretary, Ministry of
Finance, Department of Revenue,
North Block, New Delhi – 110 001

2. Superintendent, NS-II,
Special Investigation and Intelligence
Branch (Export), JNCH, Nhava Sheva,
District - Raigad, Maharashtra - 400 707

3. Deputy Commissioner of Customs, NS-II
Special Investigation and Intelligence
Branch (Export), JNCH, Nhava Sheva,
District - Raigad, Maharashtra - 400 707

4. Office of Commissioner of Customs, NS-II
JNCH, Nhava Sheva, District - Raigad,
Maharashtra - 400 707

5. Office of Commissioner of Customs, NS-II
Centralized Export Assessment Cell,
JNCH, Nhav Sheva, District - Raigad,
Maharashtra - 400 707 ...**Respondents**

Dr. Sujay Kantawala a/w Ms. Chandni Tanna, Mr. Anupam Dighe and Ms. Renita Alex i/b. India Law Alliance for Petitioner.
Mr. M.P. Sharma a/w Mr. Saket R. Ketkar for Respondent Nos.2 to 5.

CORAM : K. R. SHRIRAM &
JITENDRA JAIN, JJ.

DATED : 27th AUGUST 2024

ORAL JUDGMENT :- (Per K. R. Shriram, J.)

1. Since pleadings are completed, with the consent of the counsel, the Court decided to dispose the petition.

2. The following are three substantial prayers made in the petition:-

> *"a) That this Hon'ble Court be pleased to issue a Writ of Certiorari or Writ in the nature of Certiorari or any other appropriate Writ, Order or Direction calling for the records and proceedings dealing with the Impugned Hold Letter No. 13/2024-25/SIIB(X) bearing CUS/SIIB/MISC/327/2024-SIIB(E) dated F.No. 26.04.2024 (Exhibit E hereto) and after going into the legality, propriety, and validity thereof, to quash and set aside the same.*
>
> *b) That this Hon'ble Court be pleased to issue a Writ of Certiorari or Writ in the nature of Certiorari or any other appropriate Writ, Order or Direction calling for the records and proceedings dealing with the Impugned Letter F. No. CUS/ASS/MISC/707/2024-CEAC dated 18.06.2024 issued by the Respondent No. 5 (Exhibit M hereto) and after going into the legality, propriety, and validity thereof, to quash and set aside the same and permit the goods covered under the said shipping bills for unconditional 'back to town'.*
>
> *c) That this Hon'ble Court be pleased to issue a Writ of Mandamus or Writ in the nature of Mandamus or any other appropriate Writ, Order or Direction directing Respondents, their servants, subordinates and agents:*
>
> *i. to withdraw Impugned Hold Letter No. 13/2024- 25/SIIB(X) bearing F.No. 10ZUS/SIIB/MISC/327/2024-SIIB(E) dated 26.04.2024.*
>
> *ii. To withdraw the Impugned Letter bearing F. No. CUS/ASS/MISC/707/2024-CEAC dated 18.06.2024.*
>
> *iii. To unconditionally release the goods covered under the said shipping bills for 'back to town' purpose;*
>
> *iv. To issue Detention Waiver Certificate for the period from detention on 26.05.2024 till the release of the goods covered under the said shipping bills."*

3. Petitioner has approached this Court in view of the letter dated 18th June 2024 issued by Respondent No.5 by which Respondent No.5 has agreed to grant Petitioner's request for provisional release of the goods for 'back to town' subject to Petitioner complying with two conditions viz., (i) to submit bond for 100% FOB value of the goods and (ii) to submit cash security / bank guarantee of Rs.68,65,141/-. It is Petitioner's case that under Section 110A of the Customs Act, 1962 ("the Act") only when there is a seizure of goods under Section 110 of the Act can such a condition be imposed. It is Petitioner's case that there has been no seizure whatsoever under any provisions of the Act let alone under Section 110 of the Act.

4. Petitioner received an export order from one Fab Textile Carpets Trading Co. LLC on 3rd January 2023 for silk fabrics, hand loom silk scarves and hand-knitted woollen scarves. Petitioner filed 14 shipping bills all dated 10th April 2024 and moved cargo to the Customs area. After the goods were moved to the Customs area, samples were collected for 3 shipping bills and with regard to those 3 shipping bills, a Let Export Order ("LEO") was issued by Customs Department.

5. On 26th April 2024, Respondent No.3 placed the consignment *qua* all shipping bills including the 3 for which LEO was granted, on hold. Petitioner states that Petitioner is not aware of the reason for placing those goods on hold. Petitioner's repeated request to allow export of goods fell in deaf ears. It is Petitioner's case that by an email dated 30th May 2024, the buyer of the goods cancelled the contract.

Petitioner thereafter applied to Respondent No.3 to permit Petitioner to take the goods 'back to town' because the export order has been cancelled. It is Petitioner's case that there is no point in keeping the goods in the port anymore because the goods are not going to be exported and unnecessarily detention charges, container rental charges etc. are being incurred.

6. In response to Petitioner's request to permit taking the goods 'back to town' Respondent No.3 has issued the impugned communication dated 18th June 2024.

7. An affidavit-in-reply of almost 45 pages has been filed and about 250 pages of documents are also annexed thereto. Respondent No.3 has annexed documents relating to various other cases where Petitioner has been imposed with penalty which, according to Dr. Kantawala, are under challenge in this Court. In the affidavit-in-reply, it appears that this past history of Petitioner is being narrated to justify insistence of a security by way of bank guarantee / cash security. According to Respondent No.3 since investigation is in progress, the adjudicating authority has allowed provisional release of the goods on execution of bond equivalent to total FOB value of Rs.4,57,67,604/- and furnishing a security cover in form of bank guarantee / cash security of Rs.68,65,140.60/- being 15% of the declared FOB value.

8. Respondent No.3 has relied on paragraph 4 of the Board Circular No.01 of 2011 dated 4th January 2011. The relevant portion of paragraph 7 reads as under:-

> *"7... ...*
> *The investigation is under progress and meanwhile the exporter has requested for the provisional release of the goods for Back to Town (BTT). Therefore, in view of Para 4 of the Board Circular No. 01/2011 dated 04.01.2011 read with Sec. 110A of the Customs Act, 1962, the adjudicating authority has allowed provisional release of the goods on execution of Bond equivalent to total FOB value i.e., Rs. 4,57,67,604/- (Rupees Four Crore Fifty-Seven Lakh Sixty-Seven Thousand Six Hundred and Four only) and furnishing a security cover in form of Bank Guarantee/Cash Security of 15% of the declared FOB value i.e., Rs. 68,65,140.60 rounded off to Rs. 68,65,141/- (Rupees Sixty-Eight Lakh Sixty-Five Thousand One Hundred and Forty-One only). The relevant para 4 of the said Board Circular No. 01/2011 dated 04.01.2011 are reproduced as follows;*
>
>> *"4. <u>Seizure should be resorted</u> to only when the Customs officers have a reason to believe that the goods in question are liable to confiscation under the Customs Act, 1962 <u>and thereafter the provisions of Section 110A of the Customs Act, 1962 would come into play.</u> However, there may be situations when the goods are to be detained for purpose of tests etc. to confirm the declaration. In such cases the endeavour should be to quickly undertake the necessary action (test/enquiry etc.) and take appropriate legal action thereafter so that the period of detention is kept to the minimum. Thus, the following course of action is prescribed in respect of goods entered for exportation.*
>>
>> *(a) In case the export goods are found to be mis-declared in terms of quantity, value and description and are seized for being liable to confiscation under the Customs Act, 1962, the same may be ordered to be released provisionally on execution of a Bond of an amount equivalent to the value of goods along with furnishing an appropriate security in order to cover the redemption fine and penalty.*
>>
>> *(b) In case the export goods are either suspected to be prohibited or found to be prohibited in terms of the Customs Act, 1962 or ITC (HS), the same should be seized and appropriate action for confiscation and penalty initiated.*
>>
>> *(c) In case the export goods are suspected of mis- declaration or where declaration is to be confirmed and further enquiry/confirmatory test or expert opinion is required (as in case of chemicals or textiles materials), the goods should be allowed exportation provisionally. The exporters in these cases are required to execute a Bond of an amount equal to the value of goods and furnish appropriate security in order to cover the redemption fine*

> *and penalty in case goods are found to be liable to confiscation. In case exports are made under any Export Promotion/Reward Schemes, the finalization of export incentives should be done only after receipt of the test report/finalisation of enquiry and final decision in the matter. The Bond executed for provisional release shall contain a clause to this effect."*
>
> *Had they asked for exportation of goods, provisional clearance for exportation would have been given. Since, the exporter has later asked for 'Back to Town', the same is provisionally allowed with revenue safeguard, subject to a meagre bank guarantee amounting to 15% of the FOB value alongwith Bond, as the goods appear to be liable for confiscation under the provisions of Section 113(i), (ia), and (ja) of the Customs Act, 1962. The issue of confiscation of goods, and the imposition of redemption fine and penalty, shall be determined by the competent authority."*
>
> *[emphasis supplied]*

9. Though the Circular says endeavour should be to quickly undertake the necessary action and take appropriate legal action there is nothing to indicate this has been achieved. We should note, that first of all, there is no explanation as to how a Board Circular can be issued in variance with the provisions of Section 110A of the Act. Moreover, Respondent No.3 has strangely submitted that if Petitioner had asked for exportation of goods, provisional clearance for export would have been given, but since Petitioner is seeking 'back to town' the same can be allowed with revenue safeguard, subject to a bank guarantee amounting to 15% of FOB value alongwith bond. This according to us defies sense. Just because the exporter has asked the goods to be taken 'back to town' instead of provisional clearance for export which would have been, the situation would not change and would not be any different from provisional clearance for exportation.

10. Moreover, Section 110A only provides for releasing goods to the owner on taking a bond with such security and conditions as the adjudicating authority may require where goods are seized under Section 110A. In this case admittedly there is no seizure of any goods.

11. In the circumstances, we quash and set aside the impugned communication dated 18th June 2024. Respondent No.3 shall release the goods 'back to town' within two weeks upon Petitioner submitting (i) a bond in the format as prescribed by the department, (ii) solvency certificate from its bank and (iii) an undertaking from Petitioner's Director Mr. Yadavendra Kumar Roy to remain present whenever summoned subject to atleast 5 days advance notice being given. The said Mr. Roy shall also annex a copy of his Aadhaar card and Passport to the undertaking.

12. Petition disposed.

[JITENDRA JAIN, J.] **[K. R. SHRIRAM, J.]**

Signed by: Sayyed Saeed Ali
Designation: PA To Honourable Judge
Date: 30/08/2024 11:17:30