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WPA 5709 of 2025

M/s Sterling Agro Products
Vs.
Union of India & ors.

Mr. Rishi Raju
Ms. Shreya Mundhra
Mr. Suvranil Saha
.... for the petitioner
Mr. Subhankar Chakraborty
Mr. Falguni Bandyopadhyay
..... for the respondent No. 1
Mr. Kaushik Dey
Mr. Tapan Bhanja
.....for the custom authority

1. The instant writ petition has been filed, *inter alia*, praying for a direction upon the respondents to forthwith allow the petitioner to export the goods covered under the Shipping Bill No. 7083124 dated 07.01.2025. When the aforesaid writ petition was moved, this Court was, *inter alia*, pleased to observe and direct as follows:

> ***"1. Affidavit of service filed in Court today is taken on record.***
>
> ***2. The instant writ petition has been filed, inter alia, praying for a direction upon the respondents to forthwith allow the petitioner to export the goods covered under shipping bill no. 7083124.***
>
> ***3. Mr. Raju, learned advocate appearing for the petitioner would submit that the petitioner with an object to export areca nut powder had generated the aforesaid shipping bill no.7083124 dated 7th January, 2025, for the purpose of Let Export Order (LEO) to be issued by the customs authorities. Unfortunately, the same was not issued and the petitioner came to learn that on 7th January, 2025 two***

officials from the department of the respondents visited the Central Warehousing Corporation for examination of the cargo and on 8th January, 2025 the containers of the petitioner were sealed in presence of the official of the department of respondent no.5 with customs seal and samples were drawn. The petitioner states that the petitioner was under a **bona fide** *belief that the aforesaid process would be completed on an urgent basis. However, since the above remained pending, on 15th January, 2025 the petitioner by a letter addressed to the respondent no.5 stated that the shipping bill was filed for export under 100% EOU Scheme and the goods were supposed to set sail on 8th January, 2025. However, pursuant to the examination of cargo since the samples were already drawn, and despite the regular follow up, no objection certificate of the cargo having not been issued, on 15th August, 2025 and on 16th January, 2025, the petitioner prayed before the respondents to allow the export on a provisional basis so as to permit the petitioner to fulfill its contractual obligation and to save the petitioner from unwarranted container demurrage/detention charges.*

4. *Mr. Dey, learned advocate appears on behalf of the customs authorities. He submits that from the documents available on record it would transpire that the petitioner had applied for permission to export the goods on a provisional basis under shipping bill no. 7083124 dated 7th January, 2025. He submits that he shall take appropriate instruction with regard to the fate of the above application.*

5. *Having heard the learned advocates appearing for the respective parties and having considered the materials on record,* **prima facie**, *it would transpire that the petitioner claims itself to be a 100% Export Oriented Unit and the export in question was to set sail on 8th January, 2025. Although, the respondents have taken samples of goods, there has been no determination in this regard by the respondents as of now. The petitioner's application permitting the petitioner to allow export of goods on provisional basis also remains pending. Having*

regard thereto, I direct the respondents to forthwith take a decision on the petitioner's application to allow exports on a provisional basis as appearing at pages 43 and 50 of the writ petition dated 15th January, 2025 and 16th January, 2025 respectively, as expeditiously as possible but not later than 24th April, 2025.

6. It is made clear that the petitioner must cooperate with the respondents in connection with the enquiry initiated by the respondents.

7. Insofar as demurrage/detention charges are concerned, for the time being such charges shall stand-over till the next date of hearing.

8. List this matter for further consideration under the same heading on 28th April, 2025."

2. Since then matter has come up for further consideration today, Mr. Dey, learned advocate appearing on behalf of the respondents has placed before this Court the order dated 17th April, 2025 intimating that the petitioner's prayer for conditional release of goods has been allowed by the Principal Commissioner of Customs (Port), Kolkata subject to fulfillment conditions noted therein.

3. Mr. Raju, learned advocate appearing on behalf of the petitioner by drawing attention of this Court to the Shipping Bill appearing at page 29 of the writ petition would submit that the FOB value of the goods is Rs. 19885906.26. Unfortunately, while passing order of provisional release, the respondents have directed the petitioner to furnish the Bank guarantee for an amount of Rs. 3 crores which is much more than the value of the goods.

4. By placing before this Court, the Judgment delivered by the Division Bench of this Court in the case of ***Commissioner of Customs (Preventive), Kolkata v. M/s J.S. Jewels Pvt. Ltd.***, reported in **2025(2) TMI 887-Calcutta High Court**, he would submit that the direction issued by the Tribunal directing that the respondent therein to provide a Bond for the full value of the seized good supported by a Bank guarantee to the extent of 25% of the value of seized goods was not interfered with. By also relying on a Judgment delivered by a Co-ordinate Bench of this Hon'ble High Court in the case of ***Priyanka Maurya v. Commissioner of Customs (Preventive) Kolkata***, reported in **2017(345) E.L.T. 91 (Cal.),** he would submit that in an identical set of facts, the Co-ordinate Bench by taking note of Para 3.2 (part-1) of chapter 17 of the Central Excise Manual Supplementary instructions read with a circular dated 2nd January, 2003 being 686/2/2003-CX which, *inter alia*, provided that goods may be released provisionally under a bond and upon obtaining security for 25% of the value of goods, had directed the authorities to determine the security to be furnished by the petitioner in terms of the above circular.
5. Having regard thereto, he would submit that this Court may be pleased to direct the respondents to consider and modify the aforesaid order of

provisional release so as to direct the petitioner to secure the value of the goods to the extent of 25% of the value.

6. Mr. Dey learned advocate representing the respondents would submit that the petitioner has been permitted to import the goods duty free with an obligation to export the same. Since, goods have been suspected of misdeclaration, tests have been conducted. Pending enquiry, the petitioner has been permitted to provisionally export the goods. According to him, in terms of the Circular no. 01/2022-Customs dated 4th January, 2011, ordinarily, the exporters are required to execute a bond of an amount equal to the value of the goods and furnish appropriate security in order to cover redemption of fine and penalty in case goods are found to be liable to confiscation. Having regard thereto, according to Mr. Dey, there is no irregularity on the part of the respondents in demanding a bank guarantee of Rs. 3 crore from the petitioner towards security.

7. In response, Mr. Raju, learned advocate has referred to the Circular No. 35/2017-Cus dated 16th August, 2017 regarding provisional release of seized goods pending adjudication by Customs authorities under Section 110A of the Customs Act, 1962. Referring to the above guidelines and in particular paragraph 2.2 thereof, he would submit that the competent authority while

directing furnishing of bank guarantee or security, is required to cover not only the entire amount of duty/differential duty leviable on the seized goods being provisionally released but while computing the same the competent authority is also required to take note of the market price and estimated margin of profit of the said goods. Having regard thereto, according to him, the aforesaid computation made by the concerned respondent authorities is without any basis and calls for interference of this Court.

8. Heard the learned advocates appearing for the respective parties and considered the materials on record. In this case I may note that although initially the writ petition was filed to allow the petitioner to export the goods under the aforesaid shipping bills, however, by reasons of the subsequent provisional release order and the conditions provided therein and further noting that the exported goods which have been detained are required to be expeditiously exported, I have taken note of the condition set forth for provisional release of the goods. I have also considered the Circulars dated 4th January, 2011, being Circular No. 01/2011-Customs and the Circular No. 35/2017-Cus dated 16th August, 2017. A conjoint perusal of the aforesaid Circulars would demonstrate that in case of mis-declaration and pending confirmation of such mis-declaration by test, ordinarily, the export goods detained for the

purpose of test must be dealt with on priority basis and the export should be allowed expeditiously unless the same is found to be prohibitory items under the Customs Act 1962. In this context, the respondents have not been able to confirm that the export goods are of prohibitory items, as such, has permitted export. The question remains whether the conditions imposed by the respondents are onerous. Having regard to the aforesaid Circulars I find that the petitioner, apart from execution of bond of an amount equal to the value of the goods has been directed to furnish an amount of Rs. 3 crore as bank guarantee which is far beyond the value of the goods. Although Mr. Dey, learned advocate representing the respondents has submitted that the same is likely to cover the redemption fine and penalty in case the goods are liable to be confiscated, the documents as available on record do not disclose that the steps taken by the respondents contemplate confiscation of the said goods. Nothing has also been placed before this Court to demonstrate that the respondents are contemplating confiscation of the goods.

9. Be that as it may, since the aforesaid provisional release does not identify the reasons for determining the amount of security by way of furnishing bank guarantee, I direct the concerned authorities to take a decision only on the aspect of determining the amount of bank guarantee in the light of the Circulars dated 4th January, 2011 and

16th August, 2017. Having regard to the fact that no confiscation at this stage is contemplated, the security may be appropriately reduced in accordance with law. The above decision must be taken within seven days from the date of communication of this order. The judgment referred to in the case of ***M/s J.S. Jewels Pvt. Ltd. (supra)*** does not squarely cover this case as the case involved detention and provisional release of imported goods.

10. Having regard to the fact that goods covered under the Shipping Bill is meant for export and has been detained, it is only expected that the respondents shall make over a copy of the test result to the petitioner within seven days from the date of receipt of the test result. It is made clear that the petitioner shall cooperate in the investigation.

11. This apart having regard to the notification No. 26/2009-Cus.(N.T.) dated 17th March, 2009 concerning Handling of Cargo in Customs Areas Regulations, 2009 and having regard to the Regulation 6(L) thereof, which records that subject to any other law for the time being in force the Customs Cargo Service Provider shall not charge any rent or demurrage on goods seized or detained or confiscated by the Superintendent of Customs or Appraiser or Inspector of Customs or Preventive Officer or examining officer, as the case may be, and also noting the notification No. 38/2018-custom(NT)

dated 11th May, 2018 notifying Cargo Manifest and Regulation 2018 and in particular Regulation 10(L) thereof, which provides that the authorized carrier shall not demand any container detention charges for the good detained by customs for the purpose of verifying entries made under Section 46 or Section 50 of the Customs Act, 1962, if the entries are found to be correct and having regard to the aforesaid, I am of the view that the detention charges for the time being subject to the investigation to be made by the concerned respondents be not saddled on the petitioner, though appropriate bond/security may be obtained in this regard.

12. With the aforesaid observations and directions, the writ petition is disposed of.

(Raja Basu Chowdhury, J.)