IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3556 OF 2025

Marketing Solutions and Services Pvt Ltd .. Petitioner

Versus

Principal Commissioner of Customs Nhava Sheva-I .. Respondent

Mr. Arjun Raghavendra M (through VC), *with Sandeep Dubey i/b Piyush Deshpande , Advocates for the Petitioner.*

Mr. Satyaprakash Sharma, *with Mr. S. D. Deshpande, Advocates for the Respondent.*

CORAM: B. P. COLABAWALLA & FIRDOSH P. POONIWALLA, JJ.

DATE: MARCH 24, 2025

P. C.

1. Rule. Respondent waives service. With the consent of parties, Rule made returnable forthwith and heard finally.

2. The above Writ Petition seeks the following reliefs:-

> *"A. Issue writ/order/direction in the nature of Mandamus or any other appropriate writ/order/direction to the Respondent for the provisional release of containers pending clearance under BOE No. 6517826 dated 06.11.2024 and BOE No. 7587153 dated 03.01.2025 belonging to the Petitioner, which contain Diathonite Acoustix Plus;*

> *B. Issue writ/order/direction in the nature of Mandamus or any other appropriate writ/order/direction to quash and set aside email communication dated 16th January 2025 addressed by the Respondent to the Petitioner. "*

3. Though these are the reliefs sought, the limited relief sought is that the goods of the Petitioner be released by securing the differential duty claimed by the Department and not the conditions set out in their emails dated 16th January 2025 and 28th February 2025. For the sake of convenience, both these emails are reproduced hereunder:-

> *"16th January 2025*
>
> *Gentlemen,*
>
> *Please refer to your trailing email. In this regard, it is to inform that the competent authority has accepted the proposal for provisional release of LIVE BE (6517826 dated 06.11.2024) in the instant case on following conditions:-*
>
> *Bond Entire Value of the Goods for Live as well as Past cases covered in the IR i.e. Rs. 3,32,03,789.36 (i).*
>
> *For Live BE-BG for Securing- Differential Duty (Rs. 6,56,661.99), RF (10% of Value of Goods- Rs. 3,24,999.67) and penalty under Section 112 (a) (10% of Differential Duty - Rs. 65,666.19), Section 114AA (20% of value-Rs. 6,49,999.35) (ii).*
>
> *Past Cases- BG for Securing- Differential Duty (Rs. 60,52,162.95), RF (10% of Value of Goods – Rs. 29,95,379.26) and penalty under Section 114A (differential Duty Rs. 60,52,162.95) plus interest for reasonable period within which SCN can be issued (iii). & adjudicated) and under Section 114AA (20% of Value- Rs. 59,90,758.52).*
>
> *You are requested to look in to the matter and do the needful.*
>
> *Thanks & Regards,*
> *Appraising Group 1 & 1A*
> *JNCH, Nhava Sheva."*

> *" 28th February, 2025*
> *Gentlemen,*
> *With regard to your request, it is to inform that*
>
> *(i) The BE No. 7587153 dated 03.01.2025 is a live Bill of Entry.*
> *(ii) The proposal for provisional release of the said LIVE BE in the instant case is accepted upon following conditions:*
>
> *Bond: Entire Value of the Goods covered by the said Live BE.*
>
> *BG : For Securing Differential Duty of Rs. 6,98,317/-, Redemption Fine (10% of Value of Goods) and penalty under Section 112(a) (10% of Differential Duty) and Section 114AA (20% of Value)*
>
> *This is for information and necessary action at your end please.*
>
> *regards,*
> *Atul Choudhary,*
> *DC/Group-1, JNCH"*

4. According to the learned counsel appearing on behalf of the Petitioner, for consignments that have already been released (past cases), the demand of the Customs Department for securing differential duty is wholly illegal and contrary to Section 110A of the Customs Act, 1962 which provides *inter alia* for provisional release of goods.

5. It is the submission of the Petitioner that the present consignments cannot be held up under the guise of asking the Petitioner to secure differential duty, if any, for goods already released.

6. As far as the present consignments are concerned, it is the case of the Petitioner that what should be secured is only differential duty and not

the redemption fine or any penalty as the same is yet to be adjudicated. He submitted that even after a show cause notice is issued and the same is adjudicated against the Petitioner, the Petitioner would be entitled to challenge the same order under Section 128 of the Customs Act, 1962 by depositing 7.5% of the duty, where duty and penalty are in dispute, as more particularly set out in Section 129 E (i) of the Customs Act, 1962. He submitted that, therefore, the Department seeking to secure the penalties and redemption fines before provisional release of goods is contrary to law and those conditions for provisional release ought to be set aside.

7. On the other hand, the learned counsel appearing on behalf of the Respondent relied upon the guidelines issued by the Government of India, Ministry of Finance, Department of Revenue, Central Board of Excise and Customs (Anti-Smuggling Unit) dated 16th August 2017. The learned counsel submitted that these guidelines are for provisional release of seized imported goods pending adjudication. The learned counsel relied upon paragraph 2.2 of the aforesaid guidelines and submitted that the Department can even insist on securing the amount of penalties that may be levied under the Customs Act, 1962 as applicable, at the time of adjudication. He, therefore, submitted that the conditions imposed for provisional release of

the goods by securing even the penalty is fully justified and requires no interference.

8. We have heard the learned counsel for the parties and also perused the papers and proceedings in the above Writ Petition along with an affidavit in reply filed on behalf of the Respondent.

9. As far as securing the differential duty is concerned, we find no difficulty in the said condition being imposed. In fact, the learned counsel appearing on behalf of the Petitioner fairly conceded that the Petitioner is willing to secure the differential duty by furnishing a bank guarantee. As far as this aspect is concerned, we therefore find no difficulty in the condition imposed by the Department. As far as redemption fine is concerned, we find that the Department is also justified in asking the Petitioner to secure redemption fine because admittedly this would be payable for release of the goods (of course subject to the fact that they were properly seized). We, therefore, find that the condition to secure the redemption fine is also justified.

10. However, we are unable to accept the submission of the Department that even the penalty ought to be secured. As far as the penalty

is concerned, we find that before adjudication of the show cause notice, there is no justification on the part of the Department to ask the Petitioner to secure the penalty. It is not as if that in every single case penalty has to be imposed. Considering these facts and circumstances, we direct that the goods of the Petitioner covered under Bill of Entry No. 6517826 dated 6th November 2024 and Bill of Entry No. 7587153 dated 3rd January 2025 shall be provisionally released on the Petitioner securing the differential duty as well as the redemption fine as more particularly set out in the emails dated 16th January 2025 and 28th February 2025 respectively.

11. We make it clear that no further condition shall be imposed for the provisional release of the goods of the Petitioner covered under the aforesaid two Bills of Entry. The goods of the Petitioner shall be provisionally released within a period of one week of the Petitioner furnishing the bank guarantees for the amounts as mentioned herein above.

12. The Writ Petition is disposed of in the aforesaid terms. Rule is made absolute in the aforesaid terms. However, there shall be no order as to costs.

13. Though we have disposed of the above Writ Petition, we now place it on Board "for reporting compliance" on 15th April 2025.

14. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[FIRDOSH P. POONIWALLA, J.] **[B. P. COLABAWALLA, J.]**

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