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

\+ **W.P.(C) 10955/2023 & CM APPL. 46959/2023**

M/S. GOLDEN TOBIE LTD. .....Petitioner

Through: Mr. Abdullah Tanveer & Mr. Dhruv Gupta, Advs. (M: 9897000770)

versus

PRINCIPAL COMMISSIONER OF CUSTOMS & ORS. .....Respondent

Through: Mr. Aditya Singla, SSC, CBIC with Mr. Ritwik Saha, Adv for R-2 (M:9958846148)
Mr. Sarul Jain, Adv for R-3.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE DHARMESH SHARMA

O R D E R

% **27.01.2025**

1. This hearing has been done through hybrid mode.

2. The present petition has been filed under Article 226 of the Constitution of India seeking, *inter alia,* issuance of a writ of *mandamus* directing release of the imported goods seized by the Principal Commissioner of Customs, Air Cargo Complex (Import), New Delhi without payment of demurrage charges in terms of Regulation 6(1)(L) of the Handling of Cargo in Customs Areas Regulations, 2009.

3. The Petitioner had imported 'Mono Acetate Rods' (hereinafter "*the imported goods*") under Bill of Entry No. 6015260 dated 27th October, 2021. The Petitioner *vide* letter dated 7th November, 2021, had informed the Deputy Commissioner of Customs, New Delhi, that it has applied for import license, however, the same would take some time. In the meantime, it was requested by the Petitioner that the Department may avail the facilities of warehouse for

storing the imported goods in terms of Section 49 of the Customs Act, 1962 (hereinafter "*the Act*"). The imported goods were seized by the Principal Commissioner of Customs, Air Cargo Complex (Import), New Delhi *vide* seizure memo dated 22nd November, 2021.

4. No show cause notice was issued for a period of one year from the date of seizure of the imported goods. Despite the lapse of the period specified under Section 110(2) of the Act, the imported goods were not released by the Department. Aggrieved by the same, the Petitioner filed ***W.P.(C) 8764/2022*** for release of the imported goods. In the said writ petition, *vide* order dated 31st January, 2023, the Respondents were directed to *forthwith* release the goods unconditionally to the Petitioners. The said order reads as under:

> *"1. The petitioner has filed the present petition, inter alia, impugning a seizure memo dated 22.11.2021, whereby goods (mono acetate rods) imported under the Bill of Entry No.6015260 dated 27.10.2021 were seized.*
>
> *2. The petitioner also prays that the respondents be directed to unconditionally release the goods imported under the said Bill of Entry dated 27.10.2021.*
>
> *3. Admittedly, the show cause notice was not issued within a period of six months from the date of the seizure. However, this Court is informed that an extension was granted by the concerned officer in terms of proviso to Sub-section (2) of Section 110 of the Customs Act, 1962. Undisputedly, the extended period has also expired as more than one year has expired since the seizure of the said goods.*
>
> *4. In view of the above, in terms of Section 110(2) of the Customs Act, 1962 the respondents are directed to forthwith release the said goods unconditionally to the petitioner.*

> *5. Since it is not disputed that the show cause notice has not been issued, this Court is refraining from examining the other issues raised in the present petition.*
>
> *6. It is clarified that the present order would not preclude the respondents from initiating such proceedings as may be otherwise permissible in law.*
>
> *7. In view of the aforesaid, the present petition is disposed of. All rights and contentions of the parties are reserved."*

5. It is clear from the above, that the letter dated 7th November, 2021, sent by the Petitioner has not been discussed in the said order dated 31st January, 2023 directing unconditional release of the imported goods. Further, it is noted that in the writ petition filed earlier, the Petitioner had not sought release of the imported goods without demurrage charges.

6. The grievance of the Petitioner is that despite repeated communications to the Department including on 06th February, 2023, 28th March, 2023 and 24th April, 2023 the imported goods were not released. On 24th April, 2023, a communication was received from the Department that the imported goods can be released subject to the procedure laid down in law. In response to the same, the Petitioner then realised that the demurrage charges of the Respondent No. 3 - CELEBI Delhi Cargo Terminal Management India Pvt. Ltd. (hereinafter "*CELEBI*") was to the tune of Rs. 65 lakhs. Hence, the Petitioner has preferred the present petition. The reliefs prayed in this petition are as under:

> *"i. Issue a writ of Mandamus or other appropriate writ seeking issuance of Detention Certificate from Respondent No. 2 with a direction to release Goods*

without any Demurrage Charges in view Regulation 6(1) (l) of Handling of Cargo in Customs Areas Regulations, 2009 ; or

ii. Direct Respondent No. 2 to pay applicable Demurrage Charges for illegal detention and willful omission to place the Goods in a warehouse despite an application / request dated 07.11.2021 being moved by the Petitioner under Section 49 of the Act;

iii.Direct the Respondents to take all necessary steps in order to ensure the forthwith and unconditional release the Goods imported under the cover of bill of entry No.6015260 dated 27.10.2021.

iv. Pass such other order or further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."

7. Ld. Counsel for the Petitioner submits that despite the communication dated 07th November, 2021, the Department did not transfer the goods to the warehouse and therefore, the Petitioner is not liable to pay the demurrage charges owed to CELEBI.

8. It is noted that on 04th September, 2023, when the matter was considered, this Court had given liberty to the Petitioner to file an application under Section 49 of the Act with the Department for movement of the imported goods to the warehouse. Ld. Counsel for the Petitioner submits on a specific query from the Court that no application has been filed under Section 49 of the Act pursuant to the liberty granted *vide* order dated 04th September, 2023. It is his submission that the unconditional release having been directed by this court *vide* order dated 31st January, 2023 in ***W.P.(C) 8764/2022***, demurrage charges could not have been charged by the Department. However,

there is no explanation given insofar as the liberty given on 04th September, 2023 is concerned, as to why the appropriate application was not moved under Section 49 of the Act.

9. The stand of the Customs Department is that the imported goods being prohibited goods could not have been shifted to the warehouse. Be that as it may, Mr. Singla, ld. Counsel submits that the Petitioner has not approached under Section 49 of the Act despite the liberty being granted by this Court.

10. The stand of CELEBI is that if the demurrage charges are not paid, CELEBI shall be free to proceed in accordance with law for recovery of demurrage charges incurred for storage of the imported goods.

11. The overall conspectus of the facts would show that the Petitioner appears to have merely addressed the communication dated 07th November, 2021 for transfer of the imported goods to the warehouse. However, there is no explanation as to what steps were taken in the terms of the said communication or if any follow up was initiated by the Petitioner. Moreover, after the liberty to file an application under Section 49 of the Act was granted *vide* order dated 04th September, 2023 clearly, the Petitioner has not taken any further steps.

12. The Order-in-Original dated 07th June, 2024 has also now been placed on record. According to the Petitioner, no show cause notice was ever received by the Petitioner and the said Order-in-Original has been passed *ex parte*.

13. Mr. Singla, ld. Counsel submits that despite repeated personal hearing opportunities which were given to the Petitioner, apart from pressing the present writ petition, the Petitioner has not availed of the personal hearing opportunities. Accordingly, the concerned adjudicating authority has directed

absolute confiscation of the imported goods and penalty has also been imposed.

14. Ld. Counsel for the Petitioner has relied upon the decision in ***Union of India v. Sanjeev Woollen Mills, (1998) 9 SCC 647***, as also in ***Shipping Corpn. of India Ltd. v. C.L. Jain Woollen Mills, (2001) 5 SCC 345.*** In both these judgements, it can be noticed that they were passed in the unique facts of those cases and also because of the facts that amounted to special circumstances. No special circumstances or peculiar facts are present in this case.

15. In the present case, initially the Petitioner itself did not follow up with the customs for moving of the imported goods to the warehouse in terms of his own communication dated 07th November, 2021. Thereafter, even when liberty was granted by this Court on 04th September, 2023, the Petitioner has chosen not to avail of the same. In fact, an application was also moved by CELEBI - Respondent No.3 for securing the payment of the demurrage charges despite this no step was taken. In addition, the Petitioner has also not participated in the proceedings *qua* the show cause notice itself. Obviously, when the order dated 31st January, 2023 was passed, the Petitioner would be aware that a show cause notice is likely to be issued by the Department which was in fact issued on 30th January, 2023, though it is recorded to the contrary in the said order possibly due to lack of instructions.

16. Under these circumstances, this Court is of the opinion that the Petitioner is not entitled to the reliefs as sought under Article 226 of the Constitution of India.

17. The Petitioner is, however, free to approach the Department as also the Respondent No. 3 for release of the imported goods in accordance with law.

18. The petition is disposed of in above terms. Pending applications, if any, are also disposed of.

PRATHIBA M. SINGH, J

DHARMESH SHARMA, J

JANUARY 27, 2025/*gs/ms*