

(2009) 06 CAL CK 0007
In the Calcutta High Court
Case No : Writ Petition No. 499 of 2009

Emami Biotech Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 29-06-2009

Acts Referred:

Citation : (2010) 258 ELT 40

Hon'ble Judges : Indira Banerjee, J

Bench : Single Bench

Advocate : P.C Sen, Utpal Bose and Rajratna Sen, for the Appellant; Tapas Kumar Hazra and Sampa Sarkar, for the Respondent

Judgement

Indira Banerjee, J.—The Court: This Court by its order dated 17th June, 2009 gave directions for filing of affidavits and passed an interim order directing the Commissioner of Customs to release the goods, subject to the petitioners securing to the satisfaction of the Commissioner, the duty for the goods assessed, and subject to furnishing of a bond should the same be required. The goods were directed to be released within 48 hours from the time of submission of security in respect of duty as assessed on 8th April, 2009.

2. Pursuant to the aforesaid order, the Assistant Commissioner of Customs, Appraising Group-I, by a letter dated 25th June, 2009 directed the petitioners to furnish cash security of Rs. 2,18,80,500/- against the bill of entry in question.

3. Requiring on assessee to furnish cash security, for all practical purposes, tantamounts to directing the assessee to make the payment of the disputed duty. The duty to which the assessee has been assessed would be fully secured by furnishing of an unconditional bank guarantee. When this Court directed that the goods might be released on furnishing of security to the satisfaction of the customs authorities, in lieu of deposit of the assessed duty, it was really the desire of this Court that security should be furnished on terms and conditions approved by the Commissioner. In other words, if the security was, by

way of a bank guarantee, the terms and conditions of that bank guarantee would necessarily have to be approved by the Commissioner of Customs. The Commissioner of Customs might also in his discretion, allow some sort of security other than a bank guarantee, should the Commissioner of Customs deem it appropriate to do so. It was not the intention of this Court that the assessee should be called upon to furnish cash security which, as observed above, is as good as calling upon the assessee to make payment of the amount assessed.

4. Subject to the petitioner furnishing a bank guarantee of the entire amount as assessed by the order dated 8th April, 2009, the respondent authorities shall release the goods in question. The goods shall be released within 48 hours from the time of furnishing of the bank guarantee. The terms and conditions of the bank guarantee shall be to the satisfaction of the Commissioner of Customs. The bank guarantee shall be an unconditional bank guarantee and the same shall be kept renewed. The bank guarantee shall be renewed at least one month before the date of expiry thereof and upon 7 days' notice to the respondents, failing which it will be open to the respondents to invoke the bank guarantee and appropriate the proceeds thereof.

5. Affidavit-in-opposition may be filed within two weeks; affidavit-in-reply thereto, if any, within one week thereafter. Let the matter be listed as "specially fixed application" on 21st July, 2009 at 10:30 a.m.

6. The order dated 17th June, 2009 is modified to the extent indicated above. All questions are kept open including the question of maintainability of this writ application.

7. All parties concerned are to act on a xerox signed copy of this order on the usual undertakings.