

(2022) 06 DEL CK 0066

In the Delhi High Court

Case No : Civil Writ Petition No. 6769 Of 2022, Civil Miscellaneous Application
No. 20573 Of 2022, 22978 Of 2022

M/S ODO The Luxurious You

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 02-06-2022

Acts Referred:

Customs Act, 1962 — Section 110

Citation : (2022) 06 DEL CK 0066

Hon'ble Judges : Rajiv Shakdher, J;Tara Vitasta Ganju, J

Bench : Division Bench

Advocate : R.K. Handoo, Aditya Chaudhary, Farman Ali, Usha Jamnal, Ashok Kumar Arya, Arun Wighmal, Anurag Ojha

Final Decision : Disposed Of

Judgement

Rajiv Shakdher, J

1. In the writ petition, the following reliefs have been sought for:

"a) Forthwith allow the export of the consignments under shipping bill No. 6785376 dated 16.12.2021.

b) Direct forth with release / de-freeze of the bank accounts of the Petitioner with banks, freezed by the Additional Director-General, DRI, Ludhiana.

(c) Any other order(s) as the Hon'ble Court deems fit in the facts and circumstances of the case.

d) Quash the seizure memo dated 28.04.2022 purportedly issued under section 110 of the Customs Act under File No. VIII (IO)/ACE/SIIB/DRI/Carpet/55/2021-22 dated 28.04.2022, being mala fide, illegal and arbitrary."

2. Mr Ashok Kumar Arya, learned senior standing counsel, who appears on behalf of respondent no.2/revenue, has drawn our attention to the provisional release

order dated 10.05.2022. The conditions prescribed in the said order read as follows:

"(i) Furnishing of bond amounting to FOB value i.e. Rs. 99,17,332.55/- and Bank Guarantee amounting 18% of the FOB value.

(ii) The exporter shall not dispute the identity of goods as found in CRCL reports.

(iii) The exporter shall agree that sample tested by CRCL covers the entire export consignment."

3. Mr R.K. Handoo, who appears on behalf of the petitioner, has drawn our attention to the fact that there were three sample test reports generated in the matter.

3.1. The first report is dated 18.12.2021 (i.e., the examination), while the second report is dated 11.01.2022. The third report is dated 03.03.2022.

3.2. Mr Handoo is right about the fact that a perusal of the aforesaid reports would show that the silk content is shown to be more than 75 percent.

3.3. Insofar as the first report is concerned, the silk content is shown as 90 percent, whereas the cotton content is 10 percent. In the second report i.e., the Central Revenue Control Laboratory (CRCL) report, the silk content is shown as 75.57 percent, while the cotton content is disclosed as 15.62 percent.

3.4. Insofar as the third report is concerned, which is, the inspection report prepared by the Carpet Export Promotion Council (CEPC), in eight packets which were examined, the silk content was found to be 80 percent and the cotton content found was 20 percent, while in the remaining two packets, the silk content was 90 percent and the cotton content was 10 percent.

4. Mr Arya seeks to rely upon the second report, which is, dated 11.01.2022; based on which he contends that the petitioner cannot refute the contents of the said report, which, as indicated above, has been generated by CRCL.

4.1. It is in this background that, in the provisional release order dated 10.05.2022, the second and third condition have been stipulated.

5. According to us, the third condition cannot form the basis for grant of provisional release, for the reason it is a little nebulous. While the parties agree that the subject export consignment consists of ten [10] packets, each of which was examined by CRCL; what it does not state with clarity is whether the third condition will bind the petitioner to the contents of the CRCL report insofar as the silk and cotton content is concerned. Mr Arya's submission is that it does. If that be the position, the petitioner cannot be bound by it. The petitioner should have the right to contest the findings of the CRCL report. Thus, to our minds, the first two conditions should suffice.

5.1. Accordingly, the respondents are directed to permit the export of goods on

fulfilment of the first condition stipulated in provisional release order dated 10.05.2022. The second condition already stands fulfilled as Mr Handoo does not dispute the identity of the goods.

6. This brings us to the other aspect of the matter, which is, with regard to the lifting of the hold on the subject bank accounts.

6.1. It is the contention of the respondents that, in past, exports of carpets have been made by the petitioner by overvaluing the goods. It is, therefore, the contention of the respondents that the petitioner, by using this modality, has sought to avail of higher duty drawback and other export incentives.

6.2. In sum, the contention of the respondents is that since the silk content is much less than what was declared, it is a case of misdeclaration of both the composition and the value of the goods, which have been exported in the past and the subject goods.

7. We may note that during the course of the hearing, on 13.05.2022, inter alia, the following submissions were made before us by Mr Anurag Ojha, who appears on behalf of respondent no. 3 :

"....3.1. Mr Ojha has indicated that the following amounts are available in fourbank accounts, maintained with the Jammu & Kashmir Bank Ltd. i.e., Rs.8,850/-; Rs. 1,04,888/-; Rs. 7,504/-; and Rs. 2,882/-.

3.2. Besides this, the petitioner's bank account maintained with AxisBank, according to Mr Ojha, has a credit balance of Rs. 2,882/-...."

7.1. Mr Ojha, today, informs us that the account pertaining to the petitioner bears the following number i.e., 0055010950000015, which, as noted in the extract above, is maintained with the Jammu and Kashmir Bank Ltd., Connaught Place Branch, having a credit balance of Rs.1,04,888.04/-, as of 10.05.2022.

7.2. Mr Ojha has also clarified that the other accounts are maintained in the name of entities, which are, according to respondent no.3, connected to the petitioner. Mr Handoo, however, strongly refutes the suggestion.

8. The other contention of Mr Ojha is that the petitioner would use the account maintained by him with the Jammu & Kashmir bank, for receipt of remittances and for availing duty drawback and other benefits on account of the export consignment, which is the subject matter of present writ petition, and, perhaps, the past exports as well.

8.1. In our opinion, at this juncture, this can only be a possibility since there is hardly any money in the petitioner's bank account. Besides this, the investigation is still on. As and when the respondents are in a position to take next steps in the matter, they cannot be prevented from doing so except that they would have to adhere to what the law mandates. But that necessarily does not mean that, at this stage, the hold should continue, especially having regard to the amount which is lying in the petitioner's bank account maintained with the Jammu and

Kashmir Bank.

8.2. It is also made clear that if any further steps are taken by the respondents, albeit insofar as the past exports and/or the subject consignment is concerned, the petitioner will be at liberty to take recourse to an appropriate remedy to challenge any such actions.

9. Consequently, the writ petition is disposed of with following directions:

(i) Insofar as the goods, which are the subject matter of shipping bill no.6785376, dated 16.12.2021 are concerned, the respondents will permit the export of the same, upon fulfilment of condition no.(i) indicated in the provisional release order dated 10.05.2022, as noted above. [Since the identity of the subject goods is not in dispute, condition no.(ii) of the said provisional release order, stands satisfied.]

(ii) The respondents will lift the hold qua bank account no. 0055010950000015 concerning the petitioner maintained with Jammu & Kashmir Bank, Connaught Place Branch.

(iii) Insofar as the respondents are concerned, in case, they wish to take any further steps in the matter, either with regard to past exports and/or the subject consignment, they shall do so in accordance with the law. This shall, however, not come in the way of the petitioner taking recourse to remedy(ies) available to it, as per law.

(iv) As far as the seizure memo is concerned, since the challenge to same was made mid-way, by way of amended writ petition, and given the fact that the goods have been provisionally released, liberty is given to the petitioner to assail the same via an appropriate statutory remedy, as prescribed in law. It will be open to the petitioner to contend before the concerned authority that the seizure memo was void ab initio.

10. Consequently, pending applications shall stand closed.