

(2001) 03 MP CK 0015

In the Madhya Pradesh High Court

Case No : Writ Petition No. 400 of 2001

Neo Sack Ltd. (Export Division)

APPELLANT

Vs

Commr. of Cus. and C. Ex.

RESPONDENT

Date of Decision : 22-03-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Customs Act, 1962 — Section 143

Citation : (2001) 76 ECC 145 : (2001) 132 ELT 555

Hon'ble Judges : A.M. Sapre, J

Bench : Single Bench

Advocate : A.M. Mathur and B. Pandya, for the Appellant; B.C. Neema, for the Respondent

Judgement

A.M. Sapre, J.—What is challenged in this writ filed by the petitioner under Articles 226 and 227 of the Constitution of India is, an order dated 27-11-2000 (Annexure P5-A), passed by Deputy Commissioner of Customs by which the petitioner is asked to execute the Bond for the value of the goods as also to furnish a Bank Guarantee for Rs. 60,00,000/-. The order reads as under :-

"In this connection it is to intimate you that the Hon''ble Commissioner is pleased to allow provisional release of subject goods subject to execution of a bond for the full value of the goods with a bank guarantee for Rs 60,00,000/-(Rupees Sixty lacs).

You are therefore requested to please execute the required bond with a bank guarantee of Rs. Sixty lacs in order to release the subject goods provisionally."

2. The grievance of petitioner is only to the extent of direction for furnishing of Bank Guarantee. According to petitioner, this being a case of provisional assessment it will be governed by Custom (Provisional Duty Assessment) Regulations 1963, which in clear terms (Clause 2) provides for execution of Bond only and not the Bank Guarantee. In substance, therefore, the grievance is

direction to furnish Bank Guarantee for Rs. 60,00,000/- be quashed or in any event modified. The petitioner further states that they having deposited the full value of duty amounting to Rs. 19,95,986/- with the department, they may not be forced to furnish Bank Guarantee for the amount in question.

3. The stand of department as urged by learned Counsel for the department is that the case is covered by Section 143 of Customs Act which empowers the department to insist for bond as also security in any form. According to learned Counsel, the impugned order satisfies the requirement of Section 143 *ibid* and hence, no interference.

4. Heard Shri A.M. Mathur, learned Senior Counsel with Shri B. Pandya, learned Counsel for petitioner and Shri B.G. Neema, learned Counsel for respondents.

5. Learned Counsel for the petitioner also stated that apart from legal submissions, even if the impugned order is modified, the petitioners may be called upon to furnish Bank Guarantee for a lesser amount.

6. Having heard the learned Counsel for the parties and having examined the issue, in my opinion, the impugned order referred *supra*, deserves to be modified to the extent that petitioner will furnish Bank Guarantee for a sum of Rs. 30,00,000/- and for balance execute a Bond. Let this be done within a period of two weeks from the date of this order. It is also directed that proceedings for final assessment which are pending in respect of the matter in question be also disposed of within a period of six months to enable the parties to work out their final liability of duty on the goods.

7. With the aforesaid directions, the petition is finally disposed of.