(2015) 08 P&H CK 0196

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 12695 of 2015

Pallahan Industries APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 10-08-2015

Acts Referred:

Citation : (2015) 325 ELT 18

Hon'ble Judges : Ajay Kumar Mittal and Ramendra Jain, JJ.

Bench : Division Bench

Advocate : Jagmohan Bansal, Advocate, for the Appellant; Pankaj Gupta, Advocate, for the Respondent

Judgement

Ramendra Jain, J.—The petitioner has approached this Court inter alia praying for quashing the condition number (b) of provisional release letter dated 18-6-2015 asking it to furnish bank guarantee to the tune of Rs. 6,95,000/-. The Officers of respondent No. 2 seized five containers of the petitioner at ICD, Ludhiana on 5-3-2015, 19-3-2015 and 20-3-2015. The petitioner deposited Rs. 10,00,000/- and requested respondent No. 2 to release the seized goods provisionally, whereupon respondent No. 2 communicated no objection certificate to the office of the Commissioner of Customs, Ludhiana. Consequently, the Additional Commissioner provisionally released the goods to the petitioner without imposing any condition of furnishing bank guarantee. Thereafter on 7-4-2015, the Officers of respondent No. 2 (Directorate of Revenue Intelligence) again seized one container of the petitioner at Nhava Sheva. The petitioner requested respondent No. 4 (Assistant Commissioner of Customs), SUB (X), Nhava Sheva, Navi Mumbai, District Raigad, Maharashtra) provisionally to release its seized goods. On 24-4-2015, respondent No. 3 (Commissioner of Customs) ordered for provisional release of goods to the petitioner subject to furnishing of bank guarantee of 20% of declared FOB value, apart from execution of bond of 100% of declared value. On 25-5-2015, the petitioner deposited Rs. 5,00,000/- with the respondent by way of a demand draft and requested respondent No. 4 for provisional release of seized goods, but without insisting for bank guarantee, whereupon the respondent No. 4 reduced the amount of bank guarantee from 20% to 10% of declared FOB value vide order dated 18-6-2015.

2. Learned counsel for the petitioner has contended that the petitioner has already deposited Rs. 5,00,000/-. The petitioner is also ready to furnish personal/ surety bond to the extent of 100% of the declared value of the goods. The condition imposed of furnishing bank guarantee of 10% of the amount of the total value of FOB is quite unreasonable, arbitrary and illegal.

3. We have given our thoughtful consideration to the submissions made by the learned counsel for the parties.

4. In Om Udyog Vs. Joint Commissioner of Customs, , a Division Bench of this Court while relying upon various judgments has observed that requirement of furnishing bank guarantee of the goods is not justified on a simple dispute of classification and valuation. In the instant case also there is a dispute regarding valuation of the goods to be exported.

5. In M/s. Kuber Casting (P) Ltd. Vs. Union of India and Another, , a Division Bench of this Court has again held that the demand of a bank guarantee is not only harsh, but squeezes the petitioner''s business. The condition of a bank guarantee should, however, not be imposed mechanically or as a tool to pressurize an assessee.

6. A due consideration of the facts and circumstances of the case reveals that the petitioner has already paid Rs. 5,00,000/- and is also ready to furnish personal/ surety bond equivalent to the declared value of the goods. The respondents have not pointed out any circumstance which may raise an apprehension or presumption that the petitioner will not discharge its liability qua any amount that may be assessed at the time of final adjudication.

7. Consequently, we quash the condition (b) requiring the appellant to furnish a bank guarantee of 10% amount of the declared FOB value. The petitioner shall furnish personal/surety bond and undertaking that in the eventuality of any other amount found due, it would discharge its liability, without any protest or demure subject, however, to its right to file an appeal. The goods if not released, be released to the petitioner within two weeks from the date of receipt of certified copy of this order. It is clarified that any observation made hereinbefore shall not be taken as an expression of opinion on the merits of the controversy. However, it is made clear that the petitioner shall not be entitled to claim any duty drawback and the amount of Rs. 5,00,000/- deposited by him shall be adjusted in its liability in case any found due against it. Otherwise, the said amount shall be refunded to the petitioner, less its liability.