(2016) 02 DEL CK 0341

In the Delhi High Court

Case No : Writ Petition (C) No. 1775 of 2016

Rajesh Trehan APPELLANT

Vs

Principal Commissioner of Customs RESPONDENT

Date of Decision : 29-02-2016

Acts Referred:

Citation : (2016) 336 ELT 37

Hon'ble Judges : S. Muralidhar and Vibhu Bakhru, JJ.

Bench : Division Bench

Advocate : Mrs. Anjali J. Manish with Shri Priyadarshi Manish, Advocates, for the Petitioner; Satish Kumar, SSC and Satish Aggarwala, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

1. Notice. Mr. Satish Kumar, learned Senior Standing counsel and Mr. Satish Aggarwala, learned counsel accept notice on behalf of Respondent Nos. 1 and 2 respectively.

2. Mrs. Anjali J. Manish, learned counsel for the Petitioner at the outset states that the prayer made in this petition is being confined to seeking provisional release of the goods. The challenge is, therefore, only to the order dated 11th February 2016 passed by the Deputy Commissioner (Adjudication), ICD-Import, Tughlakabad ordering the provisional release of the seized goods subject to the following conditions :

"(i) On 100% payment of differential duty amounting to Rs. 12,06,637/-, in connection with seized goods;

(ii) On execution of Bond equivalent to the 100% value of seized goods i.e., Rs. 72,37,850/-;

(iii) On furnishing Bank Guarantee equivalent to 30% of the differential duty involved in seized goods which comes to Rs. 3,61,991/- with auto renewal clause as per RBI Guidelines;

(iv) On furnishing an undertaking by the importer that they will not dispute, challenge the description and quantity of the seized goods at any stage;

(v) On furnishing an undertaking by the importer that they will not use or dispose off already completed LED TVs as mentioned in para 2 the DRI SCN No. 51/2015, dated 26th September 2015 and complete LED TVs assemble out of the parts of the consignment at issue, either by sale or by gift without getting necessary approval of DieTY (Department of Electronics & Information Technology) and BIS (Bureau of Indian Standards)."

3. It is urged that in light of the orders passed by this Court in certain other similar matters including the order dated 5th February 2016 in Writ Petition (Civil) No. 5833 of 2015 (Spirotech Heat Exchangers Pvt. Ltd. v. Union of India) which, in turn, has followed the decision in Navshakti Industries Pvt. Ltd. v. Commissioner of Customs, ICD, TKD, New Delhi - 2011 (267) E.L.T. 483 (Del.), this Court should modify the above conditions and in particular the condition regarding payment of 100% of the differential duty.

4. The above prayer has been resisted by learned counsel for the Respondent Nos. 1 and 2 pointing out that adjudication pursuant to the show cause notice (?SCN?) dated 26th September 2015 issued to the Petitioner is still in progress. It is further submitted that unlike other cases where a SCN may not have been issued prior to the provisional release of the goods, here a serious dispute has been raised by the Respondents in the SCN as to the genuineness of the documents produced by the Petitioner. It is pointed out that in the event a penalty is levied on the Petitioner consequent to the adjudication proceedings, the Respondents may not be able to recover the penalty amount. Therefore, it is urged that the impugned order ought not to interfered with.

5. The Court finds that the petitioner had raised a dispute regarding identity of the goods and had demanded re-examination of the seized material. This was rejected by a separate order passed on 18th August 2015 by Respondent No. 2/ Directorate of Revenue Intelligence (?DRI?). The legality and genuineness of the documents produced by the Petitioner are subject matter of the adjudication proceedings pursuant to the SCN issued on 26th September 2015. Unlike the above cases where the Court has modified the conditions for provisional release of goods, in the present case a serious dispute has been raised by the Respondents regarding the genuineness of the documents produced by the Petitioner and this has been crystallized in the SCN which is pending adjudication. The issues arising therein has a bearing on the question of even the provisional release of the goods. The Court is, therefore, not inclined at this stage to interfere with the impugned order dated 11th February 2016 which grants provisional release subject to the conditions which have been extracted herein above.

6. However, the Court directs the Principal Commissioner (Adjudication), ICD-

Import, Tughlakabad to conclude the adjudication proceedings and pass the adjudication order not later than four months from today.

7. The petition is disposed of in the above terms. Order be given dasti.

