(2016) 02 DEL CK 0386

In the Delhi High Court

Case No : Writ Petition (C) No. 5833 of 2015 and C.M. No. 10518 of 2015

Spirotech Heat Exchangers Pvt. Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 05-02-2016

Acts Referred:

Citation : (2016) 341 ELT 110

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

Bench : Division Bench

Advocate : S/Shri Abhishek Anand and Yogendra Aldak, Advocates, for the Petitioner; S/Shri Satish Kumar, SSC, Satish Aggarwala and Ms. Shraddha Bhargava, Advocates, for the Respondent

Final Decision : Disposed Off

Judgement

Although one of the issues raised in this writ petition concerns the entitlement of the petitioner to avail of the benefit under the Status Holders Incentive Scrips (SHIS) in respect of exports made in the year 2011-12 notwithstanding that it has utilised the Zero Duty EPCG authorizations for a subsequent period, learned counsel for the petitioner states that the immediate grievance of the petitioner concerns the provisional release of the goods that were seized by the Directorate of Revenue Intelligence (DRI). It is pointed that an order was passed on 23rd February, 2015 by the Deputy Commissioner of Customs, ICD, Tughlakabad, New Delhi imposing the following conditions for provisional release of the goods :

"(i) 100% payment of differential duty amounting to Rs. 1,21,66,403/-.

(ii) execution of equivalent to the 100% value of the goods, i.e. Rs. 4,70,60,877/-.

(iii) furnishing Balk Guarantee equivalent to 25% of the differential duty of Rs. 1,21,66,403/- with auto renewal clause as per RBI guidelines.

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

2. It is stated that a show cause notice (SCN) has been issued to the petitioner which has been replied to. The petitioner seeks to pursue the main issue in the adjudication proceedings, confining the scope of the present petition to the issue of provisional release of the goods.

3. In the reply filed on behalf of the DRI, a preliminary objection is taken to the maintainability of this writ petition. It is urged that the order dated 23rd February, 2015 is appealable and, therefore, the petitioner should be relegated to the remedy of an appeal provided under the Customs Act, 1962. Reference is made to the decision dated 18th March, 2014 of this Court in W.P. (C) No. 1670/2014 (Candex Chemical Fibres Company (P) Ltd. v. Commissioner of Customs, New Delhi and Anr.) [2014 (310) E.L.T. 500 (Del.)].

4. As far as reply of Department of Customs (Respondent Nos. 3 and 4) is concerned, it is pointed out that a SCN has already been filed and, therefore, the petitioner should pursue the statutory remedy in the event it is aggrieved by the conditions for provisional release of the goods.

5. As far as the issue of provisional release of goods is concerned, the Court''s attention has been drawn to the decision in Navshakti Industries Pvt. Ltd. v. Commissioner of Customs, ICD, TKD, New Delhi - 2011 (267) E.L.T. 483 (Del.), in which the Court permitted the provisional clearance of the goods on the furnishing of a bond in the sum of 20% of the differential duty to the satisfaction of the concerned Commissioner of Customs. That order was assailed in a Special Leave Petition (SLP) before the Supreme Court by the Department. In Commissioner v. Navshakti Industries Pvt. Ltd. - 2011 (269) E.L.T. A146 (S.C.), the Supreme Court modified the order of this Court and permitted the goods to be provisionally cleared upon a bank guarantee of 30% of the differential duty to the satisfaction of the Commissioner of Customs. Subsequently, in Zest Aviation Pvt. Ltd. v. Union of India - 2013 (289) E.L.T. 243 (Del.), this Court followed the decision of the Supreme Court in Commissioner v. Navshakti Industries (supra), and permitted provisional release of the goods on furnishing a security in the form of bank guarantee in the sum equal to 30% of the differential duty.

6. The Court notices that despite the aforementioned orders of this Court and the Supreme Court, the respondents are continuing to impose harsh conditions for provisional release of goods. In the present case, apart from the exporter having to pay 100% of the differential duty it has to furnish a bank guarantee equivalent to 25% of the differential duty and execute a bond for 100% of the value of the goods. Since the respondents do not appear to be inclined to follow the aforementioned orders binding order of the Supreme Court, and are compelling exporters and importers to approach this Court every time for relaxation of the conditions imposed for the provisional release of goods, the Court is of the view that relegating the petitioner to a statutory remedy would not be efficacious.

7. Consequently, in modification of the conditions imposed by the order dated

23rd February, 2015 passed by the Deputy Commissioner of Customs, ICD, Tughlakabad, New Delhi, the Court directs that the provisional release of the seized goods would be allowed in favour of the petitioner subject to the petitioner executing a bond in a sum equal to 100% of the value of the goods and further furnishing security in the form of a bank guarantee for a sum equivalent to 30% of the differential duty, with an auto renewal clause and as per RBI guidelines.

8. Learned counsel for the petitioner states that the petitioner is not raising any dispute as regards the quantity and weight of the goods seized. The Court declines to express any view on the other contentions raised by the petitioner in this petition and reserves the rights and contentions of the parties to be raised in the adjudication proceedings.

9. The writ petition and the pending application are disposed of with the above terms. Order dasti under the signatures of the Court Master.

