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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **<u>W.P.(C) 11960/2022</u>**

M/S SPRAYTEC INDIA LTD. ..... Petitioner
Through: Ms Anjali J. Manish, Adv.

versus

ADDITIONAL DIRECTOR GENERAL DIRECTORATE OF REVENUE INTELLIGENCE & ORS. ..... Respondents
Through: Mr Harpreet Singh, Sr. Standing Counsel with Ms Suhani Mathur, Mr Arunesh Sharma and Mr Jatin Gaur, Advs. for R-1.
Mr Aditya Singla, Sr. Standing Counsel with Mr Adhishwar Suri, Adv. for R-2 to 4.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER
HON'BLE MS. JUSTICE TARA VITASTA GANJU

O R D E R

% **14.09.2022**

[Physical Hearing/Hybrid Hearing (as per request)]

CM Appl.40488/2022

1. This is an application moved on behalf of the petitioner seeking amendment of the writ petition.

2. Issue notice.

2.1 Mr Harpreet Singh accepts notice on behalf of respondent no.1, while Mr Aditya Singla accepts notice on behalf of respondent nos. 2 to 4 i.e., the contesting respondents.

3. Reply(ies), if any, will be filed within three weeks from today.

3.1 Rejoinder(s) thereto, if any, will be filed before the next date of hearing.

4. List the application on 10.03.2023.

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5. On 18.08.2022, when the matter last come up for hearing, we had recorded the following:

> *"1. The substantive reliefs claimed in the writ petition read as follows:*
>
> > *"(a) Issue a writ order or direction in the nature of mandamus to the Respondents to release the goods imported by the Petitioner against bills of entry No. 9687145 dated 23.07.2022, 9770459 and 9770255 both dated 29.07.2022, after final assessment; or*
> > *(b) Issue a writ order or direction in the nature of mandamus to the Respondents to issue the detention certificate for waiver of demurrage and detention charges and properly execute the same or make the payment(s) of demurrage and detention charges, which the Petitioner would pay."*
>
> *2. The other relief, i.e., prayer clause (c), claimed in the petition is for the grant of costs of the petition.*
> *3. As is evident from a perusal of the prayers made in the writ petition, it appears that a final assessment has been carried out.*
> *4. It is the petitioner's case that the subject goods have been classified under Chapter Heading 8424 [i.e., CTH 8424].*
> *4.1 It is also the petitioner's case that the Advance Ruling Authority has affirmed this position.*
> *5. Therefore, the petitioner appears to be aggrieved by the fact that the goods in issue have been unnecessarily detained, resulting in the petitioner having to bear the burden of demurrage and detention charges.*

6. It is in these circumstances, that the petitioner seeks direction for the issuance of a detention certificate.
7. Issue notice to the respondents/revenue.
8. Mr Adhishwar Suri accepts notice on behalf of the respondents/revenue.
9. Mr Suri says that he will return with instructions.
9.1. In case, instructions are received to resist the petition, a counter-affidavit will be filed before the next date of hearing.
10. Accordingly, list the matter for directions, on 02.09.2022."

6. As indicated in the extract above, the matter was listed for hearing on 02.09.2022. However, on the said date, the matter was adjourned to 06.09.2022.

6.1 On 06.09.2022, for the first time, an objection was taken by the respondents/revenue with regard to the territorial jurisdiction of this Court.

6.2 Accordingly, after hearing the counsel for the parties, leave was granted to the petitioner to move an application for amendment of the writ petition.

7. As would be evident, an application for amendment i.e., CM Appl.40488/2022, was moved, in which notice has been issued today.

8. The petitioner, presently, is aggrieved by the fact that the subject goods are detained and therefore, are incurring demurrage and detention charges.

9. We had passed over the matter to enable Mr Singla to obtain instructions as to whether, in the interregnum, the subject goods could be released, *albeit*, on a provisional basis.

9.1 Mr Singla has returned with instructions. Mr Singla says that the respondents could release the goods on execution of a bond [securing the entire value of the goods] and upon a bank guarantee being furnished equivalent to 36% of the value of the goods.

9.2 On the other hand, Ms Anjali J. Manish, who appears on behalf of the petitioner, says that, while there would be no difficulty in executing a bond for the entire value of the goods, insofar as the bank guarantee is concerned, it is ordinarily directed to be furnished equivalent to a prescribed percentage of the differential duty leviable on the goods in issue.

10. According to us, Ms Manish is right.

10.1 The question then, is as to what should be the percentage of the differential duty?

11. As would be evident from the extract of our order dated 18.08.2022, the petitioner has classified the subject goods under the Chapter Heading 8424 [i.e., CTH 8424].

11.1 This classification has been affirmed by the Advance Ruling Authority (ARA). There is no dispute that the respondents/revenue had filed an application for review, which was dismissed by the ARA on 08.08.2022.

12. Therefore, in our opinion, ordinarily, the goods should have been released, *albeit*, provisionally, only against a personal bond.

12.1 However, since Ms Manish says that the petitioner is willing to furnish a bank guarantee equivalent to 25% of the duty-differential, in our opinion, this would meet the ends of justice.

12.2 It is ordered accordingly.

13. On the petitioner taking the necessary steps for release of the subject goods on a provisional basis, the respondents/revenue will process the application as expeditiously as possible, though not later than two days of the receipt of a copy of this order.

13.1 The respondents/revenue will ensure that the application is processed within the timeframe set forth above.

14. Needless to state, the aforementioned directions issued concerning provisional release of the subject goods, will not impact the merits of the case that the parties may place before us.

15. List the matter on 10.03.2023.

16. Parties will act based on the digitally signed copy of the order.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

SEPTEMBER 14, 2022/pmc

Click here to check corrigendum, if any