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

Date of decision: 09th January, 2025

+ **W.P.(C) 149/2025 & CM APPL. 699/2025**

AMAR SINGH AND SONS TREE NUTS LLPPetitioner

Through: Mr. Pradeep Singh Rawat & Mr.
Pankaj Pandey, Advs.

versus

THE SUPERINTENDENT OF CUSTOMS, EPM, IMPORT
& ORS.Respondent

Through: Mr. Harpreet Singh, Sr. SC. With Ms.
Suhani Mathur and Mr. Shivang
Chawla, Advs.

CORAM:

JUSTICE PRATHIBA M. SINGH
JUSTICE DHARMESH SHARMA

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The present petition has been filed under Article 226 of the Constitution of India seeking issuance of a writ in the nature of mandamus for staying the encashment of the subject bank guarantee in terms of the Order-in-Original dated 6th December, 2024, passed by the Principal Commissioner of Customs (Import), Inland Container Depot, Tughlakabad, New Delhi.
3. The matter arises out of three “Advance Authorisation Licenses” bearing Nos. 1810004340, 1810004342 and 1810004343 dated 14th August, 2019 and 22nd January, 2020, respectively. In terms of the said licenses the Petitioner was permitted to import “*Walnut Inshell of Chandler Variety*” at nil rate of duty with the condition that the Petitioner would fulfil the export obligations under the said advance authorisation by exporting walnut kernels.



4. According to the Petitioner it had fulfilled the export obligations within the time limit as required under the said licenses. An investigation was initiated by the Directorate of Revenue Intelligence (hereinafter “DRAI”) which culminated in the Show Cause Notice dated 23rd November, 2023 (hereinafter “SCN”). The allegation in the SCN is that the Petitioner had diverted the imported goods to the local market and exported Indian walnut kernels under the garb of walnut kernels of chandler variety.

5. The said showcase notice was finally adjudicated *vide* Order-in-Original dated 6th December, 2024. The operative position of the said Order-in-Original passed by the Principal Commissioner of Customs is as under:

“10.0 In view of the above, I pass the following order:-

10.1 I deny the benefit of concessional rate of duty to M/s ASTN, Jammu under Advance Authorization Scheme under Notification No. 18/2015-Cus dated 01.04.2015, on the imported goods “Walnut Insheels (Chandler Variety)”, imported vide Bills of Entry, as detailed in Annexure -A to the SCN and confirm the demand of Customs duty amounting to Rs. 18,48,23,601/-(Rupees Eighteen Crore, Forty-Eight Lakh, Twenty Three Thousand and Six Hundred One) Only along with applicable interest being the duty foregone at the time of import under said Advance Authorizations, as discussed at para 8 supra.

10.2 I order to appropriate amount of Rs. 3,53,61,437/- (Rupees Three Crore Fifty Three Lakh Sixty One Thousand Four Hundred and Thirty Seven Only), paid by M/s ASTN, Jammu as discussed in para 8 supra towards the Customs duty payment of Rs. 18,48,23,601/- above and balance amount of Customs duty amounting to Rs. 14,94,62,164/- along with applicable interest will be recoverable from M/s ASTN, Jammu.



10.3 I order for confiscation of 563.89 MTs of the impugned goods 'Walnut Inshells (Chandler Variety), having total assessable value of Rs. 13,54,72,319/- imported by M/s ASTN, Jammu duty-free under Notification No.18/2015-Cus 01.04.2015, under Section 111(o) of the Customs Act, 1962 as discussed at para 7 supra. I also impose redemption fine of Rs. 1,00,00,000/- (Rs One Crore) only under section 125(1) of the Act on M/s ASTN, Jammu as discussed at para 7 supra.

10.4 I impose penalty of Rs. 1,80,00,000/- (Rs. One Crore and Eighty lacs) only under Section 112(a)(ii) of the Customs Act, 1962 on M/s. ASTN, Jammu as discussed at para 9 supra;

10.5 I impose penalty of Rs. 60,00,000/- (Rs. Sixty lacs) only under Section 112(a)(ii) of the Customs Act, 1962 on Sh. Kawal Bir Singh, designated partner of M/s ASTN, Jammu as discussed at para 9 supra;

10.6 I impose penalty of Rs. 60,00,000/- (Rs. Sixty lacs) only under Section 112(a)(ii) of the Customs Act, 1962 upon Sh. Avelok Singh, designated partner of M/s ASTN, Jammu as discussed at para 9 supra;

10.7 I order for enforcement of Bank Guarantees of Rs 3,06,77,000/- already executed by M/s ASTN, Jammu and lying with EPM section of ICD, Tuglakhabad in respect of Advance Licenses No. as discussed at para 8.6 supra and appropriate towards the balance Customs duty payment of. Rs. 14,94,62,164/- as per para 10.2 above.”

6. The Petitioner’s counsel submits that the Petitioner is in the process of filing the appeal challenging the said Order-in-Original. However, there is an apprehension due to the past history with the Department, that the Department



could encash the subject bank guarantee of Rs. 3,06,77,000/- which is lying with it even prior to the filing of the appeal and the listing of the same.

7. Reliance is placed by the Id. Counsel upon the Circular No. 984/08/2014-CX dated 16th September, 2024 (hereinafter “*the Circular*”).

The relevant portion of the same is as under:

“4. Recovery of the Amounts during the Pendency of Appeal:

4.1 Vide Circular No.967/1/2013 dated 1st January, 2013, Board has issued detailed instructions with regard to recovery of the amounts due to the Government during the pendency of stay applications or appeals with the appellate authority. This Circular would not apply to cases where appeal is filed after the enactment of the amended Section 35F of the Central Excise Act, 1944 or Section 129E of the Customs Act, 1962.

4.2 No coercive measures for the recovery of balance amount i.e., the amount in excess of 7.5% or 10% deposited in terms of Section 35F of Central Excise Act, 1944 or Section 129E of Customs Act, 1962, shall be taken during the pendency of appeal where the party/assessee shows to the jurisdictional authorities:

(i) proof of payment of stipulated amount as pre-deposit of 7.5%/10%, subject to a limit of Rs.10 crores, as the case may be; and

(ii) the copy of appeal memo filed with the appellate authority.

4.3 Recovery action, if any, can be initiated only after the disposal of the case by the Commissioner (Appeal)/ Tribunal in favour of the Department. For example, if the Tribunal decides a case in favour of the Department recovery action for the amount over and above the amount deposited under the provisions of Section 35F/129E may be initiated unless the order of the



Tribunal is stayed by the High Court/Supreme court. The recovery, in such cases, would include the interest, at the specified rate, from the date duty became payable, till the date of payment.”

8. It is, thus, submitted by Id. Counsel for the Petitioner that the encashment ought not take place and there is a serious apprehension that the subject bank guarantee would be encashed. Further, in terms of the above clause 4 of the Circular, it is his submission that till the appeal is filed and during the pendency of the appeal if the stipulated amount of pre-deposit is paid, no coercive steps can be taken for recovery of any amounts by the Department.

9. Mr. Harpreet Singh, Id. Counsel appearing for the Customs Department, submits that the Circular would be applicable in this particular case inasmuch as the Department has already attached a sum of Rs. 3,53,61,437/- as is evident from paragraph 10.2 of the Order-in-Original.

10. Heard Id. Counsels for the parties. A perusal of the Circular and the clauses extracted above would show that no coercive measures can be taken against the Appellant during the period when the limitation for filing of the appeal has not expired. In addition, if the pre-deposit has already been made the remaining amount cannot be recovered by encashment of the bank guarantee. Either way, the impugned Order-in-Original is of 6th December, 2024 and the period for filing the appeal is three months in terms of Section 129A of the Customs Act, 1962.

11. Further, considering the fact that a substantial sum has already been appropriated by the Department, the Court is of the view that the encashment of the subject bank guarantee deserves to be restrained subject to the Petitioner



keeping the said bank guarantee alive. Ordered accordingly.

12. The above order shall, however, be subject to the final disposal of the appeal which may be filed by the Petitioner before the concerned Appellate Tribunal. If, however, no appeal is filed, the Department is free to approach this Court for vacation of this order.

13. The petition is disposed of in these terms. All pending applications, if any, are also disposed of.

14. It is made clear that this Court has not examined the merits of the matter.

15. *Dasti*

PRATHIBA M. SINGH
JUDGE

DHARMESH SHARMA
JUDGE

JANUARY 9, 2025

dj/ms