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

Date of Decision: 26th March, 2025

\+ **W.P.(C) 3711/2025 & CM APPLs. 17331-32/2025**

BACKBONE OVERSEAS .....Petitioner

Through: Mr. Chinmaya Seth, Mr. A.K. Seth and Ms. Palak Mathur, Advocates.

versus

ASSISTANT COMMISSIONER OF CUSTOMS, FOREIGN POST OFFICE , NEW DELHI AND ANR. .....Respondents

Through: Mr. Jatin Singh, Advocate.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE RAJNEESH KUMAR GUPTA

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

2. The present petition has been filed by the Petitioner- Backbone Overseas under Article 226 and 227 of the Constitution of India *inter alia* seeking issuance of an appropriate writ directing the Respondents to pass an order for unconditional and provisional release of the goods entered for export *vide* Postal Bill of Export No. 725259 dated 13th January 2025.

3. The case of the Petitioner is that it had filed a Postal Bill of Export (hereinafter, '*PBE*') for the purpose of export of ladies PVC slippers. The total value as per the PBE is Rs. 9,29,145.6/-. The said consignment was put on hold by the Customs Department on 13th January, 2025, however, no reasons were given and no seizure memo was even drawn until yesterday *i.e.* 25th

March 2025.

4. The grievance of the Petitioner is that despite repeated letters to the Commissioner of Customs, requesting for release of the goods and seeking reasons for detention, no response has been received by the Petitioner.

5. The only response, which was received by the Petitioner was on 20th January, 2025. In the said response, the Office of the Assistant of Customs Commissioner Foreign Post Office, Kotla Road, New Delhi stated that the said matter has been referred to Special Intelligence and Investigation Branch (hereinafter, '*SIIB*'), ACC Export, New Customs House, Near IGI Airport, New Delhi.

6. It is the submission of ld. Counsel for the Petitioner that in terms of Circular No. 30/2013 dated 05th August, 2013, it has been repeatedly emphasised by the Central Board of Excise and Custom (hereinafter, '*CBIC*') that wrongful detention of export goods is not advisable and in fact continued detention of export goods in excess of three days must be brought to the notice of the Commissioner of Customs.

7. Ld. Counsel for the Petitioner further submits that in this matter, despite repeated letters to the office of the Commissioner of Customs, no response has been received, hence, he has filed the present writ petition seeking release of the goods.

8. Yesterday *i.e.* 25th March 2025, when the matter was listed, Mr. Jatin Singh had sought an adjournment to enable him to seek instructions. Today again it is submitted on behalf of Mr. Jatin Singh that three weeks may be granted as the SIIB, ACC Export, New Customs House, Near IGI Airport, New Delhi is looking into the matter.

9. This position is completely unacceptable to the Court, in as much as

since 13th January, 2025, no seizure memo has been drawn as well as no *Panchama* has also been drawn by the authorities.

10. The Customs officer- Mr. Suryadeo Kumar, Inspector, SIIB, ACC Export, who is present in Court today, submits that the seizure memo was issued only yesterday *i.e.* 25th March 2025 in respect of the said goods detained by the Customs Department.

11. On behalf of the Department it is further submitted that there is an apprehension that the PVC slippers are grossly overvalued with an intention to claim duty drawbacks in an irregular and unlawful manner.

12. If the said apprehension exists on behalf of the Customs Department, then suitable steps would have to be taken by the Department in respect thereof but the consignment cannot be held up in this manner.

13. In fact the Circular No. 30/2013 dated 5th August 2013, itself recognises that there is a need for expedited clearing of goods unless they are prohibited goods. The said circular is set out below:

> *"**F.No. 401/179/2009-Cus.III***
>
> *Government of India*
> *Ministry of Finance*
> *Department of Revenue*
> *Central Board of Excise & Custom*
> *North Block, New Delhi,*
> *Dated the 5th August, 2013.*
>
> *To,*
> *All Chief Commissioner of Customs/Customs (Prev),*
> *All Chief Commissioner of Customs & Central Excise.*
> *All Directors General of CBEC.*
> *All Commissioners of Customs / Customs (Prev).*
> *All Commissioners of Customs (Appeals).*

All Commissioners of Customs & Central Excise.
All Commissioners of Customs & Central Excise. (Appeals).

Subject : Provisional release of export - goods detained for investigation -reg.

Sir/Madam,

Attention is invited to the Board Circular No. 01/2011-Customs dated 04.01.2011 regarding provisional release of export goods that are detained or seized. The said Circular was issued with the objective of expediting the clearance of export goods and to ensure that where permissible by law, exports should not get unduly delayed, thereby causing congestion in ports as well as delays in fulfilment of export orders. Thus, it was instructed that provisional release of export goods that are suspected of being mis-declared or where declaration is to be confirmed by further enquiry / test or detained/seized for mis-declaration of quantity / value / description should be given on execution of Bond and suitable security to cover the redemption fine and penalty (Para 4 of Board Circular No. 01/2011-Customs dated 04.01.2011). Further, continued detention of export goods in excess of three days must be brought to the notice of the Commissioner of Customs.

2. It has been brought to the notice of the Board that the above instructions are not being implemented by certain field formations and exporting community is aggrieved by the long detention of exports goods. The matter has been raised in many forums and the issue of congestion in ports has also been highlighted by Inter- Ministerial Committee for boosting exports from Micro, Small & Medium Enterprises (MSMEs) sector, which pointed out that, besides the Boards aforementioned instructions, paragraph 2.42 of the Foreign Trade Policy also provides that export consignments shall not be withheld / delayed

for any reason.

3. The Board has re-examined the subject matter. ***The view is that there can be no justification to hold up export consignments for long periods unless the export goods are prohibited under Customs Act, 1962 or ITC (HS) Policy. Essentially genuine exports must be facilitated and there should be no delays or hold ups of export goods.*** *Therefore, the Board strongly reiterates the instruction dated 04.01.2011 referred above. It shall be the responsibility of Commissioner of Customs concerned to ensure strict compliance of these instructions. Needless to state any deviation or lapse shall be proceeded against by the Board.*

3. A suitable Public Notice for information of trade and Standing Order for guidance of staff may be issued.

Yours faithfully,

(S.C.Ganger)

Under Secretary (Customs-III)

Fax: 011 23092173"

14. It is also submitted by ld. Counsel for the Petitioner that yesterday *i.e.* 25th March 2025, summons has been issued by the Customs Department seeking the following:

"1. to tender statement under Section 108 of the Customs At, 1962

2. Copy of purchase invoices against export goods under PBE No. 725259 dt. 13.01.2025 along with copy of purchase order placed to supplier, copy of ledger maintained with supplier along with statement of transactions.

3. copy of purchase order or agreement placed by the foreign buyer. The details of previous similar exported goods along with copy of invoices along with transaction

details. Copy of GSTR-2A/2B and GSTR-3B returns for the period of January' 2025. Details of receipt of foreign remittances against previous exported goods, if any."

15. It becomes clear to the Court that the Customs Department is taking steps only after filing of the present writ petition. The delay in this manner would not be permissible as consignments of the Petitioner and other similarly placed persons are held up, when expedited steps are not taken for clearing of goods.

16. A perusal of the letters on record also show that on 20th January 2025 and 12th March 2025, repeated communications have been written by the Petitioner to the Commissioner of Customs *inter alia* requesting for release of the goods, but no response was elicited

17. Under these circumstances, it is directed that within a period of seven days, the Customs Department shall take a decision in this matter and provisionally release the goods, subject to any reasonable conditions that it deems appropriate on facts.

18. The Petitioner shall appear before the Customs Department on 27th March, 2025, *i.e.* tomorrow along with all the requisite documents as has been sought in the notice dated 25th March 2025.

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

PRATHIBA M. SINGH, J.

RAJNEESH KUMAR GUPTA, J.

MARCH 26, 2025/*MR/ck*