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

+ **W.P. (C) No. 6534/2017 & C.M. No. 27111/2017**

NARENDRA PLASTIC PRIVATE LIMITED ..... Petitioner  
Through: Mr. Abhishek Rastogi, Mr. Rashmi  
Deshpande, Mr. Ayush A.Mehrotra, Ms. Anjali  
Krishnan, Mr. Tushar Talwar, Advocates.

versus

UNION OF INDIA & ORS. .... Respondents  
Through: Mr. Sanjeev Narula, CGSC with  
Mr. Abhishek Ghai, Advocate for CBEC.

**CORAM: JUSTICE S. MURALIDHAR  
JUSTICE PRATHIBA M. SINGH**

**ORDER**

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**11.09.2017**

1. The present writ petition is by Narendra Plastic Private Limited, which is engaged in the business of manufacturing and exporting plastic products and has its registered address at Goregaon (East), Mumbai.

2. The Foreign Trade Policy ('FTP') 2015-2020 was notified by Trade Notification No. 1/2015-2020 dated 1<sup>st</sup> April 2015 and operationalised by Notification No. 18/2015-Cus dated 1<sup>st</sup> April 2015. In terms thereof, an Advance Authorization Scheme (AAS) was made available as a duty exemption scheme under Chapter 4. Exporter manufacturers, like the

Petitioner, were entitled to duty free import of the input which is physically incorporated in the export product. Imports under the AAS was exempted from payment of (i) Basic Customs Duty, (ii) Additional Customs Duty, (iii) Education Cess, (iv) Anti-dumping duty and (v) Safeguard Duty and (vi) Transition Product Specific Safeguard Duty, wherever applicable.

3. The Advance Authorization licence is issued to a manufacturer exporter or merchant exporter having past export performance in at least two preceding financial years. In the present case, having fulfilled the conditions prescribed in para 4.03 of the FTP, the Petitioner was issued an Advance Authorization. Annexure P4 to the petition lists out the details of the various Advance Authorizations issued to the Petitioner prior to 1<sup>st</sup> July 2017, which are valid as on date.

4. The Goods and Service Tax ('GST') regime ushered in changes with effect from 1<sup>st</sup> July 2017. Relevant to the present case is the impugned Notification No. 26/2017-Customs dated 29<sup>th</sup> June 2017 by which changes have been made to the earlier Notification No. 18/2015 dated 1<sup>st</sup> April 2015 specifying those duties which are exempt from payment for holders of Advance Authorizations. One significant change is that while many of the earlier exemptions listed out hereinbefore continue, for imports made after 1<sup>st</sup> July 2017, there is an additional levy of an Integrated Goods and Service Tax ('IGST'). Section 3 (7) of the Customs Tariff Act, 1975 ('CTA 1975') now provides that:

“(7) any article which is imported into India shall, in addition, be liable to integrated tax at such rate, not exceeding forty per cent, as is leviable under Section 5 of the Integrated Goods and

Service Tax Act, 2017 on a like article on its supply in India, on the value of the imported article as determined under sub-section(8)”

5. The grievance of the Petitioner is that it holds export orders placed on it prior to 1<sup>st</sup> July 2017 for the fulfilment of which it has to undertake imports of inputs. One such export order placed on the Petitioner by Walmart Inc., USA has been enclosed as Annexure-P/3 to C.M. No. 28923/2017. The Petitioner seeks to explain that, with the change brought about by the GST regime, the Petitioner would have no option but to pay IGST out of its sources causing a working capital blockage. The Petitioner would have to rely upon borrowings as it has already exhausted its overdraft limits with the banks. The prospect of the IGST being ultimately refunded some time in future is of little consolation to the Petitioner who seeks liquidity to discharge the additional levy of IGST failing which its imports will get blocked.

6. According to Mr. Abhishek Rastogi, learned counsel for the Petitioner, the Ministry of Commerce purportedly made a representation to the Ministry of Finance drawing attention to the quandary in which exporters like the Petitioner are placed. He points out that the limited relief that the Petitioner is seeking is in relation to the applicability of the additional levy of IGST to imports made by the Petitioner to fulfil export orders that were placed with it prior to 1<sup>st</sup> July 2017. The Petitioner prays that it should not be asked to pay the additional IGST on such imports as that would make the levy arbitrary and unreasonable.

7. This Court first issued notice in the petition on 1<sup>st</sup> July 2017 proposing to hear the petition on 30<sup>th</sup> October 2017. However, the Petitioner filed C.M. No. 28923/2017 seeking an interim order to permit it to make the imports without payment of the additional levy of IGST and also to seek advancement of the date of hearing. On 11<sup>th</sup> August 2017, while the Court declined interim relief at that stage, it considered it appropriate to advance the hearing of the petition to today.

8. Although the Court had granted the time to the Respondent till 31<sup>st</sup> August 2017 to file a reply to the petition, it is only today that Mr. Sanjeev Narula, the learned Senior Standing Counsel for the Customs Department, has handed over, to the Court, the counter affidavit dated 11<sup>th</sup> September 2017 sworn to by Mr. Himanshu Gupta, Principal Commissioner, GST Delhi North, New Delhi.

9. Mr. Narula submits that there is a misconception regarding withdrawal of the exemption earlier granted under the Notification dated 1<sup>st</sup> April 2015. He states that all those exemptions relevant to the Petitioner's imports for the discharge of its export orders continue as such. He, however, does not dispute that for imports made after 1<sup>st</sup> July 2017, the Petitioner would be required to pay the additional IGST which is now been made mandatory by virtue of amendment to Section 3 of the CTA, 1975. He points out that the Petitioner would be able to seek refund of the IGST after completion of its export obligations and, therefore, the Petitioner cannot have any real grievance. He submits that the Ministry of Commerce, represented by the Directorate General of Foreign Trade ('DGFT'), did not offer any significant

comments to the writ petition and, therefore, there was no change in the stand of the Union of India either through the Ministry of Finance or the Ministry of Commerce.

10. The working of the AAS is such that, for the import of inputs made by exporter towards fulfilment of export orders, the credit of customs duty, as specified in the Advance Authorization licenses issued to the exporter, is permitted to be availed of at the time of import. For instance, in the present case, one of the Advance Authorizations issued to the Petitioner specifies the period for which such authorization is valid, i.e. 18 months. It also specifies the quantity and value of the items that are permitted to be imported in order to fulfil the export obligation. In other words, at the time of import of inputs for fulfilment of export obligations, the verification is undertaken by the Customs Department to ensure that the quantity and value of the consignment imported matches what is stated in the Advance Authorization license.

11. The exporter prices the export commodity on the basis of the extant FTP. The Indian exporters, in order to remain competitive in the global market, account for the exemptions/concessions given to such exporter under the FTP. Export orders are usually placed several months in advance and the price fixed is not variable beyond a point. If an additional levy is imposed, after the acceptance of such export orders, the resultant burden cannot possibly be passed on by the exporter to the buyers outside India. This might lead to the cancellation of such export orders placing the exporter in a piquant situation.

12. It requires to be reiterated that, in the present case, the Petitioner-Exporter is not questioning the legislative competence to levy the additional IGST. It is only questioning the applicability of such levy even to imports that are made for fulfilment of export orders that have been placed on and accepted by the Petitioner prior to 1<sup>st</sup> July, 2017. Also, the Petitioner is seeking to only avail the credit outstanding in respect of advance authorizations issued to the Petitioner prior to 1<sup>st</sup> July 2017.

13. The Court is of the view that the Petitioner has made out a *prima facie* case for grant of Prayer (b) in the writ petition, i.e. a direction to the Respondents to allow the Petitioner to continue making the imports under the Advance Authorization licenses issued prior to 1<sup>st</sup> July, 2017 in terms of their quantity and value subject to terms. It is accordingly directed as under:

(i) The Petitioner will be permitted to clear the consignments of imports constituting inputs for the fulfilment of its export orders placed on it prior to 1<sup>st</sup> July 2017 without any additional levies, and subject to the quantity and value as specified in the advance authorization licenses issued to it prior to 1<sup>st</sup> July 2017.

(ii) The above clearance would be subject to (a) verification by the Customs Department that it is in conformity with the quantity and value as mentioned in the Advance Authorization license and (b) ensuring that the extent of credit is available *vis-a-vis* such Advance Authorization licenses issued prior to 1<sup>st</sup> July 2017.

(iii) The above interim direction is further subject to the Petitioner furnishing an undertaking by way of an affidavit filed in this Court within one week from today to the effect that in the case of the Petitioner ultimately not succeeding in this writ petition, or failing to fulfil its export obligations, it is liable to pay the entire IGST as was leviable, together with whatever interest as the Court may determine at the time of final disposal of the writ petition.

(iv) The Petitioner will furnish to the Customs Department the entire list of its Advance Authorizations that are valid as on 1<sup>st</sup> July 2017 and a list of the export orders placed on the Petitioner prior to 1<sup>st</sup> July 2017.

(v) It is made clear that the above interim direction will only apply to those imports which are made by the Petitioner for fulfilment of its export orders placed with it prior to 1<sup>st</sup> July 2017 and not to any export order thereafter.

14. The Petitioner is permitted to file within four weeks a rejoinder to the counter-affidavit that has been placed on record today by the Respondents. To consider the other prayer in the writ petition, i.e. Prayer (a), the writ petition is set down for final hearing on 22<sup>nd</sup> February 2018.

15. C.M. No. 27111/2017 is disposed of.

16. Order *Dasti* under the signature of the Court Master.

**S. MURALIDHAR, J.**

**PRATHIBA M. SINGH, J.**

**SEPTEMBER 11, 2017**  
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