

**CWP-14603-2024****1****IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****CWP-14603-2024 (O&M)****Date of decision: 11.03.2025**

M/s Shivalik Enterprises

...Petitioner

Vs.

Union of India and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE ARUN PALLI
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**Present: Mr. Ashish Goswami, Advocate (Through VC)
for the petitioner.Mr. Sourabh Goel, Sr. Standing counsel
for the respondent.

SUDEEPTI SHARMA, J.

1. The present writ petition is for seeking quashing of the order/letter dated 23.01.2024 issued by respondent No. 1, whereby the request of the petitioner-company, seeking extension of time to re-export the goods, was rejected. Further prayer of the petitioner is for issuance of directions to the respondents for re-extension of the period of re-export of the consignment/bill of entry bearing No. 3375303 dated 19.11.2022 and consignment/bill of entry bearing No. 3800724 dated 19.12.2022

2. Further prayer of the petitioner-company is for issuance of directions to respondent Nos. 2 and 3 to give permission to re-export the consignment and for waiver of charges of the warehouse during the pendency of the present petition.

3. Brief facts of the case are that the petitioner-company is carrying on business of Import-Export under name and style of M/s Shivalik Enterprises. On 19.11.2022, the petitioner-company imported one



consignment of black pepper against invoices No. ASTC-SE-0125 dated 03.11.2022 from Dubai, UAE, which was received in India on 19.11.2022 against Bill of entry No. 3375303 dated 19.11.2022 and the same was kept at Dhandari Kalan, Ludhiana (Punjab).

4. Two other consignments of black pepper bearing invoice No. DKG-SE-100140-A and B were dispatched on 06.12.2022 from Dubai, UAE and the same arrived in India against Bill of entries bearing No. 3808174 and 3800724 dated 19.12.2022. The same were received by M/s Shivalik Enterprises and kept at Dhandari Kalan, Ludhiana (Punjab).

5. The petitioner-company imported the above mentioned two consignments/goods for the business purpose, therefore, moved an application before the Deputy Commissioner of Custom (Bond) for transfer of the consignment/goods from Ludhiana Bonded Warehouse to CWC II, New Delhi. Since the petitioner-company had buyers in Delhi for sale of goods in local market and is also having office at Delhi. The petitioner was granted permission for transfer of goods from Ludhiana to Delhi.

6. On 18.03.2023, the petitioner-company transferred one consignment bearing No. 3375303 from Ludhiana Bonded Warehouse namely Overseas Warehousing Pvt. Ltd to Central Warehousing Corporation Second Okhla, New Delhi. On arrival of the consignment at Delhi, Central Warehouse Manager provided space for keeping the consignment/goods of the petitioner-company and the authority issued certificate of space dated 23.02.2023 as well. Due to bad business scenario, the petitioner was not receiving the proper margins of the sales, therefore, could not sell the consignments/goods and the supplier of consignments/goods demanded the remittance of their consignments/goods



or to re-export the sale.

7. The petitioner-company personally visited the office of Ludhiana Customs and the Custom Officer informed them that the permission regarding re-export was to be given by the office of Delhi Custom, since the goods were warehoused at custom bonded warehouse at Delhi.

8. The petitioner wrote the letter dated 16.11.2023 to the Deputy Commissioner, Customs (Export Processing), New Delhi seeking permission to re-export the goods due to bad business scenario. The petitioner-company received no response and on 14.12.2023, the petitioner-company received permission letter dated 12.12.2023 from Deputy Commissioner of Customs, New Custom House at Delhi but the limitation period for the Bill of Entry No. 3375303 dated 19.11.2022 had already expired on 01.12.2023 and another consignment/goods bearing No. 3800724 dated 19.12.2022 and 3808174 dated 19.12.2022 were within the limitation period. But since the period was very short and it was difficult to re-export the consignment, the petitioner-company failed to re-export all the consignments but was able to re-export only one consignment bearing No. 3808174, as the same was within limitation period.

9. On 30.12.2023, the petitioner-company moved an application before the Deputy Commissioner of Customs ICD Concor, Dhandari Kala, Ludhiana Punjab for extension of time. The petitioner also moved applications dated 11.01.2024, 17.01.2024 and 18.01.2024 to Deputy Commissioner of Customs, Ludhiana intimating that due to shortage of time, the export formalities could not be completed.

10. On 23.01.2024, the Deputy Commissioner rejected the



application of the petitioner-company for extension of time and the same is impugned in the present writ petition.

SUBMISSIONS OF LEARNED COUNSEL FOR THE PARTIES

11. Learned counsel for the petitioner contends that the impugned letter/order dated 23.01.2024 is non-speaking and is passed without following the principles of natural justice. He, therefore, prays that the impugned letter/order dated 23.01.2024 be set aside and directions be issued to the respondents to grant extension of time to the petitioner-company to re-export the consignments.

12. Learned counsel for the petitioner further contends that in the order dated 12.12.2023, it was for the first time that the petitioner-company came to know about the permission granted, vide letter dated 16.11.2023 to re-export the consignment. Further in the order dated 12.12.2023, the competent authority had granted the permission to re-export on 16.11.2023 in response to the request made by the petitioner vide letter dated 14.11.2023. Learned counsel for the petitioner further contends that he was never communicated regarding the re-export permission dated 16.11.2023.

13. Per contra, learned counsel for the respondent argues on the lines of the reply filed by the department, wherein it is stated that in pursuance to the request made on 14.11.2023, permission for re-export was granted on 16.11.2023 and despite this authorization and having ample time. petitioner failed to re-export the consignments under two Bills of Entry 3375303 and 3800724 within the stipulated period and re-export only qua third Bill of Entry 3808174 was completed.

14. Further, vide letter dated 12.12.2023, Annexure R-1 the petitioner was informed that the re-export permission was granted on



16.11.2023, however, the petitioner has failed to re-export. The petitioner was called upon to deposit the duty alongwith applicable interest and penalty or to taken extension from the port of import before re-export of the goods.

15. We have heard learned counsel for the parties and perused the whole records of the case.

16. Before proceeding further, it would be relevant to reproduce letter/order dated 23.01.2024.

“ 23.01.2024

To

*M/s Shivalik Enterprises,
106, S.F, Block C, PKT-7
Sector 8, Rohini, Delhi-110085.*

Sub: Request for extension of warehousing period - Regarding

Please refer to your letter dated 30.12.2023 regarding request for extension of warehousing period in respect of Bills of Entry No. 3375303 dated 19.11.2022 and 3800724 dated 19.12.2022.

In this regard, it is intimated that your above request for extension of warehousing period has been rejected by the competent authority. You are therefore requested to deposit customs duty alongwith interest immediately failing which action shall be taken against you as per law.

Yours faithfully

*Deepinder Rana
SUPERINTENDENT”*

17. A perusal of the above referred to order/letter dated 23.01.2024, which is impugned in the present writ petition, shows that the same is passed without any application of mind and is non-speaking.

18. On 24.10.2024, this Court passed the following order:-

“Keeping in view the observations made by this Court on 11.09.2024, the respondents were required to file a



fresh affidavit, if they have not filed even till date and today also during the course of hearing, we noticed that the request for allowing re-export was made by the petitioner on 16.11.2023 and therefore, the assertion of learned counsel for the respondent that approval was granted on 16.11.2023, appears to be incorrect as it is the date on which the request was made for seeking re-export, therefore, on that very day, it could not have been possible for granting approval.

Learned counsel for the petitioner shall place before us the original record relating to the said aspects and also file an affidavit of a responsible officer. The original record to be kept ready for perusal.

List again on 13.11.2024.”

19. A perusal of the record shows that the re-export permission was never communicated to the petitioner and it was only on 12.12.2023, for the first time when the petitioner was informed that re-export permission was granted on 16.11.2023.

20. Further that the permission granted to re-export vide letter dated 16.11.2023 was never communicated to the petitioner, therefore, he could not re-export within the specified period.

21. Since admittedly, the permission granted vide letter dated 16.11.2023 to re-export was not in the knowledge of the petitioner-company and the respondents could not bring any document on record to show that the permission granted vide letter dated 16.11.2023 to re-export was ever intimated to the petitioner-company, therefore, the impugned letter/order dated 23.01.2024 is liable to be set aside.

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22. In view of the above, order/letter dated 23.01.2024 is set aside. The respondents are hereby directed to re-consider the request of the petitioner for extension in period of warehouse and to allow the petitioner to re-export the consignment in pursuance to the re-export permission granted vide decision dated 16.11.2023. The said permission for re-export be duly intimated to the petitioner forthwith.

23. The writ petition is accordingly allowed.

24. All the pending applications, if any, also stand disposed of.

(ARUN PALLI)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

11.03.2025

Gaurav Arora

Whether speaking/reasoned : Yes
Whether reportable : Yes