(2016) 06 MAD CK 0107

In the Madras High Court

Case No : Writ Petition Nos. 30789-30790 of 2015 and M.P. Nos. 1 and 1 of 2015

ALM Enterprises — APPELLANT

Vs

Commissioner of Customs (Imports), Chennai — RESPONDENT

Date of Decision : 02-06-2016

Acts Referred:

Citation : (2016) 338 ELT 563

Hon'ble Judges : M. Duraiswamy, J.

Bench : Single Bench

Advocate : Shri N. Viswanathan, Advocate, for the Petitioner; Shri Mohana Murali, Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

M. Duraiswamy, J.—W.P. No. 30789 of 2015 has been filed by the petitioner to issue a writ of certiorarified mandamus to call for the records comprised in original order dated 2-6-2014 passed by the first respondent, to quash the same and consequently direct the respondents to unconditionally release the goods covered under Bill of Entry dated 22-10-2013, which was absolutely confiscated by the second respondent.

2. W.P. No. 30790 of 2015 has been filed by the petitioner to issue a writ of certiorarified mandamus to call for the records comprised in original order dated 9-9-2015 passed by the second respondent, to quash the same and consequently direct the respondents to provisionally release the goods covered under Bill of Entry dated 22-10-2013 confiscated absolutely contrary to the provisions of law.

3. The brief case of the petitioner is as follows :

(i) According to the petitioner, they are engaged in the import and trading of various cosmetics and other goods. The said proprietorship concern had been granted the Import-Export licence. According to the petitioner, his cousin Sahabudeen is in the business of importing electronic goods, cosmetic and toiletries from abroad with sufficient experience in the said business. The petitioner requested the overseas supplier to first supply 2070 cartons of Loomy Tunes from Air fresheners and accordingly, he was issued with invoice dated 13-10-2013 by the overseas supplier viz., M/s. Mohamed Mustafa & Samsuddin Co. Subsequent to the arrival of the consignment, the petitioner filed Bill of Entry dated 22-10-2013 declaring 2070 cartons of Air fresheners for a value of Rs. 6,50,208/- as per the invoice. However, the said value declared in the bill of entry was not accepted by the Customs Department and hence, the goods were assessed by enhancing the value of Rs. 12,09,386/-. The petitioner remitted the duty so assessed amounting to Rs. 4,26,981/- on the said goods.

(ii) The Customs Authorities drew a seizure mahazar dated 3-12-2013 by breaking open the seal and listing identically the same goods, which were found on examination as per the mahazar dated 11-11-2013 by recording the reasonable belief for the seizure of the goods as not having been declared in the bill of entry and attempted to clear the undeclared goods by way of concealment at the rear portion of the container.

(iii) According to the petitioner, an altercation broke out between the Authorised Representative of the IEC holder and the SIIB officers on 4-12-2013, resulting in the matter being referred to the local police. According to the petitioner, the altercation was basic reason behind the harsh and severe action by the customs against the imports made by the customs against the imports made by the petitioner concern, which only involved the mere inadvertence mistake committed by the overseas supplier in the dispatch of the goods as ordered without involving any attempt to smuggle or conceal the goods as alleged by the authorities.

(iv) According to the petitioner, their letter dated 19-5-2014 to the first respondent seeking for the unconditional release of the goods for the reason that show cause notice has not been issued to them within six months'' period as mandated under Section 110(2) of the Customs Act from the date of actual detention, i.e., 1-11-2013 or at least the date of examination and sealing of the goods viz., 11-11-2013. On 20-5-2015, the first respondent issued show cause notice, invoking the proviso to Section 110(2) of the Customs Act, proposing to extend the period for issuance of show cause notice by another period of six months by taking the date of seizure as 3-12-2013. As per the said notice, the petitioner was called upon to send his reply within two days and also offered a personal hearing on 28-5-2014. The petitioner submitted his reply on 27-5-2014. Thereafter, the petitioner filed a writ petition in W.P. No. 9678 of 2014 before this court seeking a mandamus to complete the adjudication proceedings, within a time frame. This court, by order dated 12-6-2014, directed the authority to complete the adjudication proceedings, as expeditiously as possible, preferably, within a period of three months. Thereafter, the first respondent issued show cause notice dated 20-5-2014 and passed orders on 2-6-2014, extending the time for issuance of show cause notice till 3-12-2014. As against the order passed in W.P. No. 9678 of 2014, the respondent preferred a writ appeal in W.A. No. 832 of 2014, which was dismissed by the Division Bench of this court on 30-6-2014. The petitioner has filed the writ petition in W.P. No. 30789 of 2015 challenging the order dated 2-6-2014.

(v) The petitioner submitted their reply to the show cause notice on 25-1-2015. The second respondent, by its order dated 9-9-2015, confirmed the proposal to the show cause notice, without considering the submissions made by the petitioner. Challenging the order dated 9-9-2015, the petitioner has filed writ petition in W.P. No. 30790 of 2015.

4. The brief case of the respondents are as follows :

(i) According to the respondents, the examination of the consignment led to recovery and seizure of 2741 cartons of cosmetics such as Brut deodorant, Johnson & Johnson products, Dove silky cream, etc., and 729 cartons of Looney Tunes Room Air Freshener. According to the respondents, though the petitioner contended that these cosmetics were imported by mistake and was unintended, at the time of detailed examination of the consignment, the cosmetic items were found kept sealed behind the declared Air freshener cartons.

(ii) According to the respondents, the contention of the petitioner that the discrepancy in the weight and that the mistake was unintended appears to be false.

(iii) According to the respondents, under the proviso to sub-section (2) of Section 110 of Customs Act, 1962, the Commissioner of Customs (Imports), has got jurisdiction to extend the period for issuance of show cause notice in respect of seized goods under the mahazar dated 3-12-2013 by another six months, i.e., till 3-12-2014.

(iv) Further, according to the respondents, the petitioner has not exhausted the appeal remedy neither before the Commissioner (Appeals) under Section 128 of Customs Act, 1962 nor before the Tribunal under Section 129A of Customs Act, 1962 before challenging the adjudication order before this court.

5. The learned counsel appearing for the petitioner submitted that Section 110A of the Customs Act, enables the provisional release of the goods pending adjudication. However, from the language of Section 110A read with Section 125, it is clear that both these provisions do not distinguish between goods which are prohibited from being imported into or exported out of India and goods in respect of which there is no such prohibition. In case, the imported goods are confiscated by the Government, the property in those goods vests with the Central Government in terms of Section 126(1) of the Customs Act, 1962. Consequently, the officer adjudging confiscation, should take and hold possession of the confiscated goods under Section 126(2) of the Act. There is no provision in the Customs Act, 1962, for directing the re-export of the goods that are confiscated under Section 122 of the Act. The only manner in which confiscated

goods could be dealt with, is perhaps by the sale of those goods by the Central Government, after taking possession under Section 126 of the Act. Section 150(1) of the Act applies only to goods which are not confiscated.

6. In the case on hand, on examination of the goods imported by the petitioner, the authorities found excess weight in the goods imported and the petitioner cannot contend that due to mistake excess goods were shipped.

7. When there is no provision under the Customs Act for re-exporting the excess goods, the contention of the petitioner cannot be accepted.

8. According to the respondents, the excess goods, which were shipped to the petitioner, can be construed only as smuggled goods by way of non-declaration and consignment. Under the proviso to sub-section (2) of Section 110 of the Customs Act, the Commissioner of Customs (Imports) got jurisdiction to extend the time by six months by another six months for the issuance of show cause notice.

9. In the case on hand, the goods were seized under the mahazar dated 3-12-2013 and the time was extended the by Commissioner of Customs till 3-12-2014, for the issuance of show cause notice. Therefore, it cannot be said that the extension of time by the authority is against the provisions of the Customs Act. Learned counsel for the respondents rightly contended that without exhausting the appeal remedy provided under Sections 128 and 129A of the Customs Act, 1962, the petitioner has approached this court by way of writ petitions challenging the impugned orders.

10. When specific provisions are available to the petitioner for filing an appeal against the impugned orders under Sections 128 and 129A of the Customs Act, 1962, without exhausting the alternative remedy, the petitioner cannot approach this court by way of writ petitions.

11. On a perusal of the counter filed by the respondents, it could be seen that opportunity of personal hearing was also given to the petitioner before passing the impugned orders. Therefore, when there is no violation of principles of natural justice and when an alternative remedy by way of appeal is available to the petitioner, the writ petitions cannot be entertained. In these circumstances, it is open to the petitioner to challenge the impugned orders by way of an appeal before the Commissioner (Appeals), in accordance with law.

12. With these observations, the writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

