(1994) 02 MAD CK 0041

In the Madras High Court

Case No : Writ Petition No. 1044 of 1994

Arcath Textile Mills Pvt. Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 07-02-1994

Acts Referred:
Customs Act, 1962 — Section 108, 49

Citation : (1994) 70 ELT 575

Hon'ble Judges : Kanakaraj, J

Bench : Single Bench

Advocate : Shri S. Sampathkumar, for the Appellant; Shri C.A. Sundaram, Addl. Central Govt. Standing Counsel, for the Respondent

Judgement

Kanakaraj, J.—The petitioner are said to be a small scale unit, having a Textile Mill. They imported for the purpose of their business 200

bales of Synthetic Soft Waste (Acrylic). According to them the goods were shipped under a bill of lading dated 11-9-1993. This date is important

because as and from 14-9-1993 the subject goods were brought under the restricted list and the goods could not have been imported without a

licence. The petitioner filed the Bill of Entry on 17-11-1993. Even according to the petitioners there was an enquiry by the third respondent and

summons was issued to the petitioners on account of a suspicion that the real bill of lading was dated 23-10-1993. Since the matter was getting

delayed the petitioners wrote to the second respondent on 21-12-1993 seeking permission to bond the consignment in a bonded warehouse, if the

respondents did not immediately clear the consignment. According to the petitioner they were suffering demurrage and container-detention charges

at the rate of Rs. 4250/- per day. The petitioner, therefore, prays for the issues of a writ of mandamus to direct the respondents to give permission

to clear the consignment along with a certificate for waiver of demurrage. At the time of arguing the case learned counsel for the petitioner says that

alternatively, the petitioners may be permitted to have the goods bonded u/s 49 of the Customs Act.

2. The third respondents has filed a counter-affidavit sworn to on 2-2-1994. In this counter-affidavit it is stated that certain investigations prima

facie disclosed serious irregularities regarding the date of the bill of lading. It is emphasized that on and from 14-9-1993 the goods could not have

been imported without a licence. The suspicion of the respondents is that with a view to avoid this ban, the petitioners had fabricated the shipping

documents including the bill of lading dated 11-9-1993. On the date of hearing, learned counsel for the respondents submitted that the

investigations had been completed and they were in a position to adjudicate the matter. In fact, as many as four shipments with bills of lading dated

8-10-1993, 13-10-1993 and 23-10-1993 had been made on behalf of the petitioner and three of the shipments have been cleared by furnishing

false dates of bill of lading. The subject shipment is the fourth attempt and the investigation disclosed that the subject goods were shipped in a

Vessel m.v. ORANJE v. 1012 which was carrying the goods from Busan in Korea to Singapore. From Singapore consignments were transhipped

by another vessel to Madras. The Vessel m.v. ORANJE arrived at Busan, Korea only on 23-10-1993 and sailed on 25-10-1993 carrying the

subject cargo. The petitioners in response to the summons issued u/s 108 of the Customs Act gave certain statements, but could not properly

explain the discrepancy. It is stated that he also waived the issue of a show cause notice and sought for adjudication. The respondents are ready to

pass orders provided sufficient time is given.

3. So far as the question of bonding the goods a reference to Section 49 of the Customs Act shows that unless the Assistant Collector of Customs

is satisfied that the goods cannot be cleared within a reasonable time, he cannot permit the goods to be stored in a warehouse. In other words, it is

only where the authorities are forced to take some time for permitting clearance that the question of warehousing u/s 49 will arise. Where the

authorities have a suspicion that the importer had committed irregularities and the goods are liable for confiscation, they are not bound to give

permission u/s 49 of the Customs Act. In this case both the importer and the Customs House Agent are suspected to have subscribed to a

declaration, the truth of which is highly doubtful. Therefore, the alternative submission of the learned counsel for the petitioners for permitting them

to warehouse the goods u/s 49 of the Customs Act, cannot be conceded.

4. The only direction that can be given in the writ petition is to direct the respondents to produced to adjudicate the matter and pass orders on or

before 23-2-1994. The writ petition is dismissed with the above direction. No costs.