(1996) 07 CAL CK 0058

In the Calcutta High Court

Case No : Writ Petition No. 1551 of 1996

Ashok Kumar Kochar APPELLANT

Vs

Commissioner of Customs RESPONDENT

Date of Decision : 25-07-1996

Acts Referred:

Citation : (1997) 94 ELT 62

Hon'ble Judges : Tarun Chatterjee, J

Bench : Single Bench

Advocate : Kapoor, for the Appellant; None, for the Respondent

Judgement

Tarun Chatterjee, J.—Before me the learned Counsel for the Customs Authority conceded that although thousands of writ petitions have been moved in this Court under similar situation and orders of similar nature have been passed by this Court to release the goods on the terms and conditions mentioned in those orders but nothing could be found for the last two or three years against the persons concerned in the matter of under invoicing of the value of the consigned goods disclosed by such persons. The learned Advocate for the Customs Authority only prays that liberty may be given to the Customs Authority to initiate proceeding against the concerned persons if something is brought to the notice of the authorities regarding under invoicing of the value of the goods which were imported to this country. The learned Advocate for the Customs Authority also produced an instruction received by him from the Assistant Collector of Customs, Group-Ill Calcutta from which it appears that the assessment of umbrella panels consignments in group is done provisionally upon execution of P.D. Bond by the parties who are obtaining orders from this Court or from any other appropriate Court. The consigned goods so far as those persons who did or do not obtain any Court order are concerned, are released on an execution of a bank guarantee to the extent of 20% of declared C.I.F. value. Let this instruction produced by the learned Counsel for the Customs Authority be kept with the record.

2. Mr. Kapoor, the learned Advocate appearing on behalf of the petitioners submit that an attempt was made by the Customs Authority to find out whether really under invoicing of the C.I.F. value of the goods consigned was really made by the persons who are bringing these type of goods from foreign countries. According to him after thorough enquiry nothing could be found against the persons concerned in the matter of under invoicing of the value of the goods consigned.

3. Considering the above aspect of the matter and the submission of the learned Counsel for the parties I dispose of this writ application by making the following order :-

It is not disputed by the learned Counsel for both the parties that at least 1000 cases have been moved in this Court for release of umbrella panels for the last two years and the order which was passed in Suresh Kumar Banthia Vs. Collector of Customs, was also passed by other different learned Judges of this Court. Even today the learned Counsel for the Customs Authority could not produce any order which is not similar to the order passed in the aforesaid case (Suresh Kumar Banthia v. Collector of Customs) nor any order of the Division Bench setting aside the decision rendered in Suresh Kumar Banthia Vs. Collector of Customs, . At the same time the submission of Mr. Kapoor that attempts were made by the Customs Authority to find out as to whether really under invoicing of valuation of the consigned goods was made by the persons who were bringing these goods from the foreign countries and nothing could-be found against he persons concerned could not be disputed by the learned Counsel for the Customs Authority. Considering the submission of the learned Counsel for the parties and in view of. the fact that in more than 1000 cases similar orders have been passed in the similar situation and considering the instructions produced by the learned Counsel for the Customs Authority I do not find any reason not to follow the decision made in the case of Suresh Kumar Banthia Vs. Collector of Customs, .

4. Accordingly this writ application is also allowed following the aforesaid decision rendered in Suresh Kumar Banthia Vs. Collector of Customs, . The Customs Authority are directed to release the consignment of umbrella panels in question subject to the writ petitioner executing the bond in favour of the Collector of Customs Calcutta in such a manner as may be directed by the Authorities. The Customs Authority shall indicate the nature of the bond to be executed by the writ petitioner within a period of 48 hours from the date of communication of this order. Upon the writ petitioners executing bond in the manner required the Customs Authority shall release the umbrella panels to the writ petitioners.

5. There will be a wharfage rent exemption granted to the petitioners at the time of the release of the goods subject to the adjustment that may be made by the authorities subsequently and the writ petitioner undertakes to pay wharfage rent if the same is found payable by it at that time.

6. It is made clear that this decision will not stand in the way of the Customs authorities from making enquiries and starting proceedings against the firm or

the writ petitioner including issuance of show cause notice if advised, in respect of the consignment in question on the ground of under invoicing provided that there is material for it to do so.

7. It is not disputed by the learned Counsel or the Customs Authority that in terms of an earlier order passed on the same application, Bank Guarantee has been furnished by the writ petitioner for the-release of goods in question. In view of the order passed today it is not necessary now to direct that the Bank Guarantee which has been furnished by the writ petitioner shall remain. Accordingly, on furnishing the P.O. Bond, I direct the Bank Guarantee furnished already by the writ petitioner shall stand discharged.

8. There will be no order as to costs.

9. All parties concerned are to act on a xerox signed copy of the minutes of this dictated order on the usual undertaking.

