
(2016) 07 DEL CK 0137

In the Delhi High Court

Case No : Writ Petition (C) No. 3400 of 2016

Asia Huayu Metal Wire Mesh Products (P) Ltd.

APPELLANT

Vs

Principal C.C.

RESPONDENT

Date of Decision : 13-07-2016

Acts Referred:

Citation : (2016) 339 ELT 244

Hon'ble Judges : Dr. S. Muralidhar and Najmi Waziri, JJ.

Bench : Division Bench

Advocate : Mrs. Anjali J. Manish and Shri Priyadarshi Manish, Advocates, for the Petitioners; S/Shri Satish Aggarwala, Pragy Bhushan and Sanjay Khanna, Advocates, for the Respondents

Final Decision : Disposed Off

Judgement

1. There are two prayers in this writ petition filed by M/s. Asia Huayu Metal Wire Mesh Products (P) Ltd. The first is that a mandamus be issued to the respondents to assess the goods imported by the petitioner against Bill of Entry No. 4767708, dated 31st March, 2016. The alternative prayer is that the respondents should be directed to make a provisional assessment of the goods imported under Section 18 of the Customs Act, 1962.

2. The background of the present petition is that the petitioner applied for and was granted an Import Export Code on 15th July, 2015. The petitioner is engaged in the import and trading of the metal wire mesh products. A foreign supplier, i.e., Hebei Gaozheng Mining Equipments Co. Ltd. offered the petitioner two consignments of wire mesh, which had been imported by two different parties, who had abandoned the goods and had not taken the delivery. It is stated that the foreign supplier on 30th November, 2015 supplied to the petitioner the correct invoice, the packing list and the bill of lading. A no-objection was issued by the previous consignee. On the basis of the above documents, the Petitioner by letter dated 30th November, 2015 requested the Deputy Commissioner of Customs (Import) to amend the Bill of Lading (B/L).

However, it was learnt by the petitioner that against the said B/L, an alert had been issued by the Directorate of Revenue Intelligence ("DRI").

3. Along with the counter affidavit filed in this writ petition by the Container Corporation of India ("CONCOR"), the copy of the letter dated 13th July, 2015 issued by the Customs has been enclosed. The said letter advises CONCOR to put on hold the two containers till further orders and that the containers should not be released without NOC from the Deputy Director DRI DZU, New Delhi, on the above mentioned subject.

4. The Petitioner wrote to the DRI on 15th December, 2015 requesting issuance of the no-objection for amending the Import General Manifest ("IGM"). A further representation was made on 28th December, 2015 to the Commissioner of Customs (Import) for amendment of the IGM. In turn, the Customs advised the petitioner to get clearance from the DRI.

5. It appears, that on 4th January, 2016, the DRI wrote to the Principal Commissioner of Customs (Import), pointing out that from the documents submitted by the petitioner it appeared that the quantity of goods shown in the copy of the bill of lading dated 19th May, 2015 (26,300 Kgs.) for one container was not matching with the earlier bill of lading issued which showed the quantity to be 23000 Kgs. It was pointed out that the value of the goods shown in the two invoices also did not match. A reference was made to the valuation shown in the invoices received from the electronic devices of one Mr. Raj Kumar Arora, an authorised representative of one of the earlier consignees. Thereafter in Para 5 of the said letter, the DRI requested the Customs as under :

"5. in view of the above stated facts, it is requested that the value declared in the invoices resumed from the electronic devices of Shri Raj Kumar Arora during investigation may be considered at the time of assessment of the said two containers."

6. A difficulty has arisen as a result of DRI not categorically communicating to the Customs that it has lifted the alert issued in respect of the two containers. Without the lifting of the alert, it is not going to be possible for the Customs to proceed with the assessment. Likewise, even as regards CONCOR, unless the "hold notices" issued by the DRI in respect of the containers are withdrawn, the physical inspection and thereafter the removal of the goods is not possible. Meanwhile, the ground rent charges in respect of the two containers have been mounting.

7. It is in the above circumstances that the present writ petition was filed. Notice was directed to be issued on 25th April, 2016 requiring the replies to be filed within two weeks. At the request of the DRI and the CONCOR, further time was granted on 18th May, 2016. When the matter was listed on 11th July, 2016, a further request was made by Mr. Satish Aggarwala, learned counsel for the DRI, that he was yet to obtain instructions and, therefore, at his request the matter was kept for today.

8. Mr. Aggarwala has today handed over an affidavit dated 12th July, 2016 sworn by Mr. S.K. Mishra, Sr. Intelligence Officer of the DRI. While the affidavit virtually repeats whatever has been stated in the letter dated 4th January, 2016 issued by the DRI to the Customs, it is completely silent on the lifting of the alert issued in respect of the two containers. Mr. Aggarwala sought some more time to obtain specific instructions on this aspect.

9. The Court considers the request for further time to be unreasonable for the simple reason that the entire purpose of the Petitioner filing the present petition was to get the alert notice issued by the DRI removed and this petition itself has been pending since 25th April, 2016. The demurrage charges have been mounting, and for no fault of the Petitioner, it is unable to proceed with the assessment of the goods by the Customs and the ultimate clearance of the goods.

10. In the circumstances, the Court proceeds on the basis that the letter written by the DRI on 4th January, 2016 to the Customs requesting the Customs to go ahead with the assessment subject to the requests made by the DRI in Para 5 of the letter, should be taken as the DRI lifting the alert in respect of the said two containers. Without the alert being lifted, it is not going to be possible for the Customs to proceed to assess the consignments.

11. Accordingly, the writ petition is disposed of by issuing following directions :

(a) The Respondents will proceed hereafter on the basis that the alert issued by the DRI in respect of the two containers in question stands removed;

(b) The Customs will write to the CONCOR, i.e., Respondent No. 4, not later than one week from today, giving its no-objection for the physical inspection of the goods; and

(c) The Customs authorities will proceed with the assessment and complete it within a period of two weeks thereafter subject to the petitioner complying with all the formalities and requirements of Respondent No. 4.

12. Dasti.