(2011) 03 P&H CK 0722

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 3786 of 2011 (O and M)

Bajrangbali Trading Company APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 17-03-2011

Acts Referred:

Customs Act, 1962 — Section 110A, 24, 49
Customs Tariff Act, 1975 — Section 15

Citation : (2012) 275 ELT 311

Hon'ble Judges : Ajay Kumar Mittal, J;A.K. Goel, J

Bench : Division Bench

Judgement

Adarsh Kumar Goel, J.—This petition seeks quashing of seizure of goods of the petitioner and a consequential direction to permit clearance of goods kept at the Container Freight Station, Ludhiana.

2. Case of the petitioner is that it imported scrap under the Open General Licence Scheme in February, 2011 and filed Bills of Entry declaring the goods to be Heavy Melting Scrap. Duty was accordingly paid but the goods were seized and seizure memos, were prepared on the allegation that higher rate of duty may be payable. According to the petitioner, the seizure was without any justification as the goods cannot be held to be liable to confiscation in any manner. Some material which is said to be part of machinery is also in practicable terms scrap and cannot be classified as re-rollable products or machinery. Further case of the petitioner is that though instructions have been issued by the Central Board of Excise and Customs to the effect that option of provisional release should be ordered to avoid unnecessary detention of goods, unless the goods are prohibited, instead of directing provisional release, the goods were illegally seized u/s 24 of the Customs Act, 1962 (for short, "the Customs Act"). If the goods could be put to more than one use, the same could be mutilated, to accept the stand of the importer that the goods were scrap. The stand of the petitioner that the goods are scrap, is also supported by Chapter Note 8 of Section 15 of the Customs Tariff Act.

3. In response to the notice, a reply has been filed on behalf of the Directorate of Revenue Intelligence, Ludhiana, raising a preliminary objection that the petitioner had alternative remedy of seeking provisional release of goods u/s 110A of the Act. The petitioner also has a remedy of seeking storage of goods u/s 49 of the Act. The goods are prime material or re-rollable material and have been misdeclared as Heavy Melting Scrap, resulting in evasion of duty. The goods were examined and were found to be stuffed with used complete Fork Lifts/ Engine Blocks/Cylinder Heads and parts of heavy machinery. Search was conducted at the premises of the petitioner and the goods were seized, on account of the belief that there was misdeclaration.

4. We have heard learned counsel for the parties.

5. Learned counsel for the petitioner submits that the goods are scrap and even if the respondents are of the view that they are used machinery, the same does not deviate from the fact that the goods are scrap. At best, it is a case of mutilation to which the petitioner had no objection. The seizure is illegal and even if there is power to effect the seizure, exercise of such power should be for valid reasons and not arbitrary. Fairness in action is constitutional obligation of an Administrator. There was no bar to order of provisional release being passed instead of waiting for an application. Effecting seizure puts heavy financial burden in terms of storage charges and thus, exercise of power of detention of goods to prevent loss of revenue is coupled with duty to pass a provisional order, wherever a case is made out, so that unnecessary harassment and loss to the assessee is avoided. According to learned counsel for the petitioner, the maximum duty which may be payable would be ` 3 lakhs and on account of the inaction and delay of 45 days by the respondents, the petitioner may be liable to pay a sum of ` 12 lakhs as detention charges.

6. Learned counsel for the respondents submits that Show Cause Notice is proposed to be issued u/s 24 and pending consideration, though there is no objection to order of provisional release being passed u/s 110A of the Act, such an order could be passed only after an application was moved and not otherwise.

7. We have considered the rival submissions.

8. While the issue of calculation of duty or any further action in accordance with law may be taken by the concerned authorities, we do not find any justification for inaction of the respondents in ordering provisional release on the plea that application for that has not been made by the petitioner. The power of provisional release is coupled with a duty when case for such release exists in view of the fact that heavy storage charges are liable to be paid by the petitioner merely on an allegation of misdeclaration. Concern for safeguarding loss to revenue is not compromised if an order of provisional release is passed. Contention on behalf of the respondents that the order of provisional release cannot be passed unless an application is made is untenable. No bar is shown in law to order of provisional release being passed. In fact such an order is expected to be passed if otherwise

justified so that unnecessary loss to the assessee is avoided without compromising the requirement of safeguarding the revenue.

9. Accordingly, we allow this petition and direct the respondents to pass an order of provisional release forthwith subject to such conditions as may be permitted under the law. If the petitioner deposits the differential duty, as may be assessed, the goods may be released, unless the same are held to be prohibited goods. If it is found that the petitioner will be liable to pay any other fine of amount, the petitioner will furnish personal bond to secure such payment. The order may be passed within three days from the date of receipt of a copy of this order.

10. The petition is disposed of.

