
(2012) 11 P&H CK 0178
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 18439 of 2012

Best Mega International

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 08-11-2012

Acts Referred:

Citation : (2017) 347 ELT 94

Hon'ble Judges : Ajay Kumar Mittal and G.S. Sandhawalia, JJ.

Bench : Division Bench

Advocate : Shri Saurabh Kapoor, Advocate, for the Petitioner; Shri Kamal Sehgal, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

G.S. Sandhawalia, J.—The present writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of an appropriate writ or order in the nature of certiorari/mandamus, declaring the action of the respondent-authorities in not releasing the consignment of imported goods belonging to the petitioner being illegal, arbitrary, mala fide and violative of Articles 14 & 19(1)(g) of the Constitution of India. Further prayer has been made to direct the respondent-authorities to release the consignment in question as per Section 18 of Customs Act, 1962 (in short, the "Act").

2. The pleaded case of the petitioner is that it is a proprietorship concern and is carrying on its business activities at New Delhi. The petitioner is dealing in the import and trading of old and used multi-functional devices falling under Chapter Heading 8443 31 00 of Customs Tariff Act, 1975 (for brevity, "1975 Act") attracting customs duty @ 18% approximately. Accordingly, the aforesaid goods are freely importable as per the Foreign Trade Policy, 2009-2014 of the 1975 Act.

3. The petitioner, during the course of business, imported consignment of 236 pieces of old and used multi-functional devices vide Invoice No. LSL 412-121, dated 25-5-2012 as per Bill of Lading No. DHSZN 1205197, dated 27-5-2012. A

request was made for the opening of the bill of entry under Section 46 of the Act before Respondent No. 3 which was allowed on 2-7-2012 and Bill of Entry No. 7246930 for clearance of the impugned old and used multi-functional devices declaring the value and description as per invoice supplied by the overseas supplier was opened. Request was made to Respondent No. 2 to allow de-stuffing of the cargo in order to prevent further demurrage and detention of the goods vide letter dated 4-7-2012. The consignment was examined by the Customs Officer under the First Check System and the petitioner kept on visiting the office of Respondent No. 2 to clear the goods at the earliest but was verbally informed that old and multi-functional devices fall under the restricted category. Request was made on 25-8-2012 that the aforesaid goods do not fall under the restricted category as the same had been booked prior to the amendment in the policy. A personal hearing was fixed before Respondent No. 3 on 7-9-2012 wherein it was brought to the notice of the respondents that the instant case did not fall under the restricted category as the goods had been purchased much before the amendment in the Foreign Trade Policy and it may be allowed to be cleared provisionally. Accordingly, the writ petition was filed on the ground that the assessing officer had to provisionally assess the goods and provisionally release them as the petitioner was incurring heavy demurrage. The goods were neither cleared provisionally nor finally despite the documents being furnished. Reliance was placed upon instructions issued in pursuance of the directions of this Court earlier that the goods should be cleared within 3 days from the date of entry.

4. Written statement was filed on behalf of Respondent Nos. 2 & 3 by the Additional Commissioner of Customs, ICD, Ludhiana wherein it was pleaded that the bill of entry dated 2-7-2012 Bearing No. 7264930 had been filed for import of 236 units of old and multi-functional devices. The same had been imported from M/s. Lucky Speed Ltd., Hong Kong vide Invoice No. LSL-412-121 under the bill of lading dated 27-5-2012. The petitioner had filed the bill of entry for the clearance and classification of the goods under the Tariff No. 8443 31 00 of the First Schedule to the 1975 Act and filed under the first check procedure. The Chartered Engineer, Atul Gupta & Company submitted in its report that the goods are old and used digital multi-function printing and copying machines. The import of second-hand copying machines was specifically allowed against a licence which was otherwise restrictive in nature. The petitioner had filed the bill of entry after 5-6-2012 and the goods imported by them were restricted for imports specifically as per Para 2.17 amended by Supplement to Foreign Trade Policy, after 5-6-2012. Therefore, the goods were liable to be confiscated under Section 111(d) of the Act and, therefore, the petitioner was not entitled for provisional release. An order dated 17-9-2012 was passed by the Additional Commissioner of Customs, ICD, Ludhiana wherein goods were ordered to be redeemed under Section 125 after payment of fine of Rs. 42,00,000/- in lieu of the confiscation. Therefore, the petitioner had either to pay the redemption fine/penalty/duty or to challenge the order of confiscation in appeal under Section 128 of the Act before the Commissioner Appeals.

5. Counsel for the petitioner has vehemently contended that the petitioner is incurring heavy demurrage due to the non-clearance of the goods and that at the time of the purchase of the goods and the date of the invoice, i.e., 25-5-2012, the goods could be imported and the restriction was only subsequent, against an import license.

6. On the other hand, counsel for Respondent Nos. 2 & 3 submitted that against the order dated 17-9-2012, an appeal lay with the Commissioner Appeals under Section 128 of the Act and, therefore, the issue was yet to be adjudicated upon.

7. After hearing counsel for the parties, we are of the opinion that the petitioner had approached this Court on 17-9-2012 with the prayer that the consignment in question be released since no order had been passed. On the same date, the Additional Commissioner of Customs, ICD, Ludhiana, passed the order, whereby confiscation of the goods under Section 111(d) of the Act had been made and also gave the option of payment of redemption fine of Rs. 42,00,000/- besides imposing a penalty of Rs. 5,00,000/- under Section 112(b)(ii) of the Act. Counsel for the petitioner did not dispute that an appeal has already been filed during the pendency of the petition. In such circumstances, it would be appropriate that the appellate authority adjudicates the appeal filed by the petitioner.

8. The grouse of the petitioner that remains, is that heavy demurrage charges are being incurred and therefore, hearing of the appeal by the Commissioner Appeals be expedited. Under the circumstances, while disposing of the writ petition, it is directed that the Commissioner Appeals, Customs & Excise, Chandigarh-I shall dispose of the appeal titled as Best Mega International v. Additional Commissioner against the order dated 17-9-2012, within a period of 15 days from the receipt of the certified copy of this order, in accordance with law.