(2007) 12 DEL CK 0041

In the Delhi High Court

Case No : Writ Petition (Civil) No. 8787 of 2007

Bhaiya Fibres Ltd. APPELLANT

Vs

Addl. Dir. General of Revenue Intelligence RESPONDENT

Date of Decision : 19-12-2007

Acts Referred:
Customs Act, 1962 — Section 110, 110A, 18

Citation : (2012) 281 ELT 396

Hon'ble Judges : Madan B. Lokur, J;Dr. S. Muralidhar, J

Bench : Division Bench

Advocate : Neeraj Kishan Kaul, with Piyush Kumar and Ms. Shikha Sapra, for the Appellant; Rajeeve Mehra, CGSC, for the Respondent

Judgement

Madan B. Lokur, J.—Rule D.B. The Petitioner had imported PVC laminated flexible film, gummed vinyl, printable vinyl, PVC foam board from some parties in China. The goods were imported between January and September, 2007 through the ports at Kolkatta, Mumbai and Tuticorin. In all, the Petitioner had filed 16 bills of entry in respect of the imported goods.

2. There is no dispute that in respect of 4 bills of entry imported through Kolkatta port, the goods have been cleared on a provisional assessment. The Petitioner has furnished bank guarantees and has cleared those goods. Insofar as the balance 12 bills of entry are concerned, one of them relates to Tuticorin, one to Kolkatta and the remaining 10 to Mumbai. The Petitioner seeks the release of the goods covered by these bills of entry on a provisional assessment basis, since the Directorate of Revenue Intelligence (DRI) has some objection with regard to valuation of these goods.

3. It is contended by learned Central Government Standing Counsel appearing on behalf of the Respondent that the goods have been grossly under valued by the Petitioner and during investigation it has transpired that the goods imported by the Petitioner, which are lying seized under superdarinama ought to be valued at US$ 1640/PMT whereas the Petitioner has declared their value between US$ 870/

PMT to US$ 1000/PMT.

4. Learned counsel for the Petitioner has drawn our attention to the Customs (Provisional Duty Assessment) Regulations, 1963. Regulation 2 thereof reads as follows :-

REGULATION 2.Conditions for allowing provisional assessment.-

Where the proper officer on account of any of the grounds specified in subsection (I) of Section 18 of the Customs Act, 1962 (52 of 1962), is not able to make a final assessment of the duty on the imported goods or the export goods, as the case may be, he shall make an estimate of the duty that is most likely to be levied hereinafter referred to as the provisional duty. If the importer or the exporter, as the case may be, executes a bond in an amount equal to the difference between the duty that may be finally assessed and the provisional duty and deposits with the proper officer such sum not exceeding twenty per cent of the provisional duty, as the proper officer may direct, the proper officer may assess the duty on the goods provisionally at an amount equal to the provisional duty.

5. A reading of the aforesaid Regulation shows that where there is a dispute with regard to the valuation of imported goods, the proper officer under the Customs Act, 1962 may release those goods on an importer/exporter executing a proper bond and depositing with the proper officer an amount not exceeding 20% of the difference in duty as claimed by the importer/exporter and the provisional duty as assessed by the proper officer.

6. Insofar as the present case is concerned, the amount that the Petitioner would be required to deposit would be 20% of the differential duty provisionally determined as above. Since the Petitioner has already paid duty on the value of US$ 870/PMT, it would now be required to pay 20% of the differential duty that is 20% of the duty calculated at the provisional value of US$ 1640/PMT and duty paid at the value declared by the Petitioner.

7. The grievance of the Petitioner as it stands now is to the effect that Respondent has permitted provisional release of the goods by letter dated 24th October, 2007 Stipulating certain conditions, which are contrary to or in excess of the Customs (Provisional Duty Assessment) Regulations, 1963. The letter dated 24th October, 2007 reads thus : -

Directorate of Revenue Intelligence

Delhi Zonal Unit

B-3 & B-4, 6th floor, Paryavaran Bhavan

C.G.O. Complex, Lodhi Road

New Delhi -110003

(Tel. No. 011-24364713 &. Fax No. 011-24362669)

D.R.I.F. No. 23/76/2007-DZU/8619

24th October, 2007

To,

M/s Bhaiya Fibers Ltd.,

3007, Bahadur Garh Road,

Saini Building, 2nd Floor,

New Delhi-110006.

Sub: Provisional Release of seized goods - reg.

Please refer to your letter - dated 16-10-2007 on the above subject matter. In this regard I am directed to inform you that your request for provisional release of the seized goods has been accepted on the following conditions :

(1) Payment of differential duty i.e. difference between the duty calculated at provisional value of US$ 1640/PMT and duty paid at the declared value of US$ 870/PMT i.e. 46,45,891 /- calculated on provisional basis.

(2) Execution of indemnity bond equivalent to the seizure value of Rs. 4,86,15,710/-.

(3) Execution of Bank Guarantee to the tune of Rs. 48,61,571/- i.e. 10% of the seizure value.

(4) An undertaking for not disputing the identity of the goods during the course of adjudication or prosecution should be given.

This issues with the approval of Additional Director General, D.R.I., D.Z.U., New Delhi.

(M.S. Meena)

Senior Intelligence Officer

8. A perusal of clause 1 of the letter shows that the Respondent is demanding the entire differential duty to be deposited by the Petitioner instead of 20% thereof as postulated by the Customs (Provisional Duty Assessment) Regulations, 1963. In addition thereto, the Respondent is also demanding execution of an indemnity bond equivalent to the entire seizure value of the goods and a Bank Guarantee to the extent of Rs. 48,61,571/-, which is 10% of the seizure value of the goods. According to the Petitioner, this is clearly contrary to or in excess of the requirement of the Customs (Provisional Duty Assessment) Regulations, 1963.

9. The Respondent seeks to justify its action by relying on Section 110A of the Customs Act, 1962, which reads as follows :-

110A. Provisional release of goods, documents and things seized pending adjudication. - Any goods, documents or things seized u/s 110, may, pending the order of the adjudicating officer, be released to the owner on taking a bond from him in the proper form with such security and conditions as the Commissioner of Customs may require.

10. Learned Central Government Standing Counsel submits that there is a distinction between provisional release of goods and provisional assessment of goods. We find that both are the same in substance, because provisional release of goods cannot be effected without a provisional assessment of goods. Even if the Respondent is able to show that it has acted in accordance with law, it would really make no difference because the principles laid down by the Customs (Provisional Duty Assessment) Regulations, 1963 would nevertheless be binding for provisional clearance of the goods in the absence of any other method of safeguarding the interests of the Revenue. Learned Central Government Standing Counsel has not been able to show any other principle or parameter for adjudicating the method of safeguarding the interest of the Revenue when the goods are to be released provisionally in cases such as the present.

11. Under the circumstances, we have to go by the principles laid down by the Customs (Provisional Duty Assessment) Regulations, 1963. We, therefore, direct the Respondent to provisionally clear the goods forming the subject matter of 12 bills of entry that have been mentioned in the petition upon the Petitioner depositing an amount equivalent to 20% of the difference in the provisional duty as sought to be assessed by the Respondent and on the basis of the value prima facie determined by the Respondent, that is US$ 1640/PMT and the value declared by the Petitioner, that is between US$ 870/PMT and US$ 1000/PMT. The Petitioner will, of course, be also obliged to execute a bond to pay the balance of the differential duty as and when it is finally assessed. The Respondent will issue a show cause notice to the Petitioner before taking a final view in the matter.

12. The 4th condition that has been laid by the Respondent in their letter dated 24th October, 2007 does not appear to be unreasonable inasmuch as the Petitioner should not be permitted to dispute the identity of the goods once they are provisionally released in terms of our order.

13. What remains to be decided is in respect of four bills of entry that have already been provisionally assessed in relation to the goods imported by the Petitioner in Kolkatta. Learned Central Government Standing Counsel says on instructions that the Respondent is not demanding anything further than what has already been provisionally assessed in respect of these four bills of entry.

14. Needless to say, all clearances would be subject to the final adjudication that would be arrived at by the Respondent.

15. No further orders are required to be passed in the matter. The writ petition is disposed of.

