(2015) 02 KL CK 0216

In the High Court Of Kerala

Case No : WP (C). No. 2803 of 2015 (A)

Chalissery Kirana Merchant APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 02-02-2015

Acts Referred:

Citation : (2015) 323 ELT 556

Hon'ble Judges : A.K. Jayasankaran Nambiar, J

Bench : Single Bench

Advocate : Devan Ramachandran, T. Rajasekharan Nair, Aswin Gopakumar, K.M. Aneesh and Adarsh Kumar, for the Appellant; N. Nagaresh, Assistant Solicitor General and John Varghese, SC, Advocates for the Respondent

Judgement

A.K. Jayasankaran Nambiar, J—The petitioner, who had imported a consignment of arecanut from Pakistan, had sought clearance of the consignment at the concessional rate of duty, as applicable to imports effected under the South Asian Free Trade Area Agreement (for short, ''SAFTA''). The respondent Customs authorities, however, found certain gunny bags in the containers that were imported by the petitioner, which gave rise to a suspicion that the goods in question could be of Indonesian origin, and not of Pakistani origin as declared, for the purposes of claiming the concessional rate of duty. Under those circumstances, when the petitioner sought a release of the goods, the respondents permitted only a provisional release on compliance with the conditions in Ext. P12 notice that was issued to the petitioner. The said conditions read as follows:

1. Execution of bond for Assessable Value;

2. Payment of duty in terms of SAFTA Notification;

3. Payment of 20% of differential duty [on tariff rate];

4. Cash deposit/BG from a Nationalized Bank towards remaining portion of

differential duty.

In the writ petition, the petitioner is essentially aggrieved by condition No. 4, to the extent it insists on a cash deposit/bank guarantee from a Nationalized Bank towards the remaining portion of the differential duty, as a condition for the release of the goods. It is the contention of the petitioner that the goods being perishable in nature, it is essential that they are permitted clearance at an early date, but the insistence of the respondents for exorbitant amounts by way of bank guarantee would render futile the attempts of the petitioner for an expeditious clearance of the consignment.

2. I have heard Sri Devan Ramachandran, learned counsel appearing for the petitioner and Sri John Varghese, learned Senior Standing counsel appearing for the respondents.

3. On a consideration of the facts and circumstances of the case and also the submissions made across the Bar, I am of the view that there is merit in the contention of the petitioner, that the imports in question were effected after complying with the procedural requirements of the SAFTA notification, which enabled the petitioner to claim clearance of the goods at concessional rate of duty. The relevant documents, such as the certificate of origin issued by the Karachi Chamber of Commerce and Industry/Trade Development Authority of Pakistan, and the invoice that accompanied the consignment, clearly indicated that the goods were of Pakistani origin. As against this, the only material relied upon by the Customs authorities, to doubt the correctness of the aforesaid certificates and invoices, is the detection of certain gunny bags in the containers that held the imported goods, which gave rise to a suspicion that the goods could have been sourced from Indonesia. At this stage of the proceedings, I am of the view that the certificates issued by the Karachi Chamber of Commerce and Industry/Trade Development Authority of Pakistan should be given due weightage insofar as they are certificates issued in terms of a notification that was issued to give effect to a multilateral agreement entered into between South Asian Countries, to which both India and Pakistan were signatories. I am, therefore, of the view that the goods can be permitted a provisional clearance on the petitioner executing a bond for the assessable value, paying duty on the consignment in terms of the SAFTA notification, and paying 35% of the differential duty (on tariff rate) in respect of the consignment that has been imported. The petitioner shall also furnish a bond, without any surety or security, in favour of the respondents towards the remaining portion of the differential duty. I make it clear that, if the petitioner complies with the aforesaid conditions, the respondents shall release the consignment of goods imported by the petitioner under Ext. P6 series of bills of entry, forthwith and without any further delay.

4. I must hasten to add that, the observations in this judgment with regard to the certificates relied upon by the petitioner are only for the purposes of arriving at a prima facie view with regard to the entitlement of the petitioner for a

provisional release of the goods and shall not in any way affect the findings of the respondents, in the adjudication that is to follow. The writ petition is disposed of with the aforesaid directions.