(2012) 08 MAD CK 0130

In the Madras High Court

Case No : W.A. (MD) No. 548 of 2012

Commissioner of Customs, Tuticorin — APPELLANT

Vs

Empire Exports — RESPONDENT

Date of Decision : 14-08-2012

Acts Referred:
Customs Act, 1962 — Section 110, 110(A)

Citation : (2013) 287 ELT 41

Hon'ble Judges : P.P.S. Janarthana Raja, J;M. Duraiswamy, J

Bench : Division Bench

Advocate : R. Aravindan, for the Appellant; B. Sathish Sundar, for the Respondent

Judgement

P.P.S. Janarthana Raja, J.—The writ appeal is filed against the order passed by the learned Single Judge of this Court in M.P. (MD) No. 2 of 2012 in W.P. (MD) No. 6961 of 2012, dated 19-6-2012. The respondent herein is the proprietor of M/s. Empire Exports, West Bengal and is engaged in the import and export of spices, betel-nuts and condiments for the past 15 years. For the purpose of conduct of the business, the respondent herein has been allotted Import and Export Code by the Office of the JDGFT, Kolkata in No. 0296007328. The respondent imported 53,592 Kgs. of split betel-nuts with declared C & F value of Rs. 8,42,198.28 and 36,480 Kgs of whole betel-nuts with declared C & F value of Rs. 5,73,282.20 from Bangladesh. The supplier of the goods was one M/s. Tara Export Corporation, Mongla, Bangladesh. The goods were invoiced and dispatched under Bill of Lading dated 22-10-2010 and the same was arrived at Tuticorin Seaport in the last week of November 2010. Thereafter, the respondent filed Bill of Entry No. 2371179, dated 29-11-2010 for assessment and clearance of the said goods. The appellant''s had not passed any order u/s 110(A) of the Customs Act and also not provisionally released the goods in spite of repeated reminders. The respondent has filed a writ petition in W.P. (MD) No. 6961 of 2012. Along with the writ petition, a petition for stay in M.P. (MD) No. 2 of 2012 was also filed. After hearing the arguments, this Court granted interim direction as prayed for, on payment of the duty amount. Aggrieved over the same, the appellants herein have filed the present writ appeal.

2. Learned Standing Counsel appearing for the appellants, vehemently contended that the learned Single Judge is wrong in passing the interim direction releasing the goods, on payment of only the duty amount. Learned Standing Counsel vehemently further contended that the Revenue also made valuation of the goods which is much more than the value declared by the respondent-assessee. Further it is contended that the value shown by the respondent-assessee is very low and therefore, the Revenue revalued the same and fixed the valuation. Under the circumstances, the learned single Judge ought to have directed the respondent-assessee to pay 30% of the differential duty of admitted value by the respondent-assessee and the value fixed by the Revenue, and in respect of the balance amount of 70% differential duty, the respondent should be directed to furnish bank guarantee, till the adjudication is over. Therefore, the order passed by the learned single Judge is wrong, illegal, without any basis and justification. Further, the learned Standing Counsel relied on various High Court and Supreme Court judgments, in support of his proposition.

3. Learned counsel for the respondent-assessee submitted that the respondent is willing to pay duty as declared by them and also willing to pay 30% of the differential duty of admitted value declared by them and the value fixed by the Department, and in respect of the balance amount of 70% differential duty, they undertakes to execute personal bond.

4. Heard the learned counsel for the parties and perused the entire materials placed on record. In the present case, it is not in dispute that the goods can be released provisionally. Section 110(A) of the Customs Act deals with provisional release of goods, documents and things seized pending adjudication and it reads as follows:-

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

From the reading of the above, it is clear that pending the order of the adjudicating officer, goods can be released to the owner, on taking a bond from him in the proper form with such security and conditions if the adjudicating officer may require. Further, it is also brought to our notice the recent Notification No. 81/2011, dated 25-11-2011, issued by the Government of India, wherein it is stated that if the importer or exporter, as the case may be, execute a bond in an amount equal to the difference between the duty that may be finally assessed or re-assessed and the provisional duty and deposits with the proper officer such sum not exceeding twenty percent 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. The learned counsel appearing for the respondent-assessee further stated that in a number of cases, this Court had taken an uniform view that in respect of provisional release of goods, the Court pleased to order 30% on the difference between the declared value and the value fixed by the authorities and for the remaining amount, the Court used to direct the assessee to furnish personal bond to the satisfaction of the officer. The learned counsel also relied on the recent judgment of the Supreme Court considering similar nature and also brought to my notice the judgment of the Supreme Court in the case of Navshakti Industries Pvt. Ltd. v. Commissioner in Civil Appeal No. 3940 of 2011, vide judgment dated 4-5-2011 [2011 (269) E.L.T. A146 (S.C.)], wherein, while considering similar issue, the following order is passed:-

Leave Granted.

The present appeal is directed against the judgment and order dated 11th May, 2010 passed by the Division Bench of the High Court of Delhi directing the appellants herein to clear the goods of the respondents on their furnishing a bond of 20% of the differential duty to the satisfaction of the concerned Commissioner of Customs.

The appellants have filed the present appeal being aggrieved by the aforesaid order in respect of which it is being contended that the aforesaid order passed by the High Court is erroneous as the amount for which the bond is to be furnished by the respondents is on the lower side.

Having considered the facts and circumstances of the case and also taking notice of the fact that the goods in question are newsprint which is perishable in nature, we issue a direction that the goods of the respondents shall be cleared by the appellants herein on the respondents'' furnishing a bank guarantee of 30% of the differential duty to the satisfaction of the Commissioner of Customs. The goods shall be released in terms of this order immediately on furnishing of the aforesaid bank guarantee and satisfaction of the concerned Commissioner of Customs. We also direct the Commissioner of Customs to hear the adjudication proceeding pending before him as early as possible, preferably within a period of three months, from the date of receipt of a copy of this order.

In terms of the aforesaid order, the appeal stands disposed of. We, however, make it clear that while passing the aforesaid order, we have not expressed any opinion or views on the merits of the dispute which shall be independently considered by the competent authority.

6. A Division Bench of this Court also in W.A. Nos. 398 to 400 of 2012 by order dated 24-5-2012 followed the above Supreme Court judgment and directed the assessee to pay 30% of the differential duty and in respect of the balance amount, the assessee was directed to execute a bond and also further directed the assessee to pay duty on the valuation declared by the assessee.

7. By following the above Apex Court as well as this Court judgments cited

supra, the respondent is directed

(i) to pay the duty as declared by them;

(ii) to pay 30% of differential duty of admitted value by the respondent and the value fixed by the Department; and

(iii) to execute a personal bond for the balance amount of 70% differential duty to the satisfaction of the concerned officer.

8. The above directions are to be complied with by the respondent within a period of two weeks from the date of receipt of a copy of this order. On fulfilling the above conditions, the appellants are directed to release the goods.

9. Under the circumstances, the order passed by the learned single Judge in the writ petition is modified to the extent as stated above. It is made clear that the above releasing of goods is subject to the final adjudication proceedings to be taken by the authorities concerned. It is made clear that liberty is given to both the parties to move the single Judge for early disposal of the writ petition. The writ appeal is disposed of accordingly. Consequently, M.P. (MD) No. 1 of 2012 is closed. No costs.