(2011) 03 GUJ CK 0030

In the Gujarat High Court

Case No : Special Civil Application No. 2526 of 2011

Elite Impex APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 17-03-2011

Acts Referred:
Customs Act, 1962 — Section 110, 111

Citation : (2011) 268 ELT 76

Hon'ble Judges : S.G. Gokani, J;Akil Abdul Hamid Kureshi, J

Bench : Division Bench

Advocate : Devan Parikh, for the Appellant; R.J. Oza, for the Respondent

Judgement

Akil Kurehsi, J.—We have heard learned advocates for the parties for final disposal of the petition.

2. The Petitioners have challenged action of Respondents Custom Authorities in seizing its goods arrived at Kandla port, in total 32 containers, all containing betel-nuts. In essence, the Petitioners have challenged an order dated 25-2-2011 as at Annexure-Y by virtue of which after seizing goods, Customs Authorities agreed to release the same on certain conditions.

3. Shortly stated facts are as follows:

3.1 The Petitioners in the present case, imported beetle-nuts in 32 different containers which arrived at Kandla port. In the past also, Petitioners had imported beetle-nuts declaring them to be of origin of Srilanka and thereby claiming exemption of 100% on the import duty by virtue of notification No. 26/2000 dated 1-3-2000. It is not in dispute that past consignments were released either finally or provisionally without insisting on payment of any import duty at that stage.

3.2 In case of present consignments, 12 containers arrived at Kandla port with respect to which the Petitioner filed three bill of entries on 1-12-2010. The

Petitioners'' claim for exemption of import duty on the ground that goods were or origin of Srilanka, was doubted by the Customs Department. From the replies filed their case appears to be that goods are from Indonesia and Singapore and not from Srilanka and that therefore, duty exemption is not available to the Petitioners. The Petitioners are therefore, liable to pay 100% import duty ignoring exemption. Since the Petitioners mis-declared such details, they are also liable to face proceedings for confiscation and penalty etc. On this premise, the Respondents seized the said goods under panchnama dated 4-1-2011 which relates to 12 containers corresponding to three bills of entries dated 1-12-2010.

3.3 After seizure of first consignment, some more containers of the Petitioners of the same goods also arrived at Kandla port in 20 containers. With respect to these 20 containers which reached later, it is the case of the Petitioners that in view of the disputes in previous consignment, the Petitioners did not seek any duty exemption. Instead the Petitioner wrote a letter to the Customs Authority on 27-12-2010 stating that:

We have already filed bill of entry for 12 containers. We have not filed bill of entry for remaining 20 containers. However, looking to the stand taken by the department, we are at a loss to understand how we should clear the goods. Our purchaser is insisting on delivery of material. We do not want to file any document which is incorrect. However, clearing of the material is of utmost importance. Please therefore, help us and guide us in the matter.

3.4 There are subsequent letters of the Petitioners also on record essentially conveying to the Customs Department that Petitioners under such controversial circumstances, do not wish to, at this stage, claim duty exemption but seek clearance of goods on payment of full duty under protest.

4. There appears to be some confusion with respect to what declaration the Petitioner should have made under such circumstances. On one hand stand of the Petitioners is that goods originated from Srilanka. However, for the sake of early clearance of goods they were prepared to pay full import duty under protest. With respect to this aspect, we may not dilate any further. Fact remains that on 12-1-2011, Petitioners filed further bill of entry covering such 20 consignments. These consignments were seized under panchnama dated 1-2-2011.

5. Since the Petitioners require release of the goods provisionally on certain terms and conditions as permitted under the Customs Act, the Petitioners pressed for such release with the Authority. Eventually by impugned order dated 25-2-2011, Customs Authority agreed to release of goods covering all 32 containers in following manner:

The matter has been examined by the Commissioner of Custom, Kandla and directed; goods may be release provisionally subject to (i) Payment of full Customs Duty, (ii) Execution of PD Bond for full Value of goods, (iii) Bank Guaranty of Rs. 3,00,00,000/- (Rs. Three Crore) You are therefore, requested to submit the above documents before filing B/E for clearance of subject goods.

6. Counsel for the Petitioners submitted that conditions imposed are unjust, illegal and impermissible. He drew our attention to the Circular No. 686/2/2003, dated 2-1-2003 issued by Central Board of Excise & Customs, providing guidelines for provisional release of goods under similar circumstances. He pointed out that in addition to insisting on bond, circular provides for 25% of the bond amount by way of bank guarantee for security. In the present case, Respondents have asked for bank guarantee of Rs. 3 crores which is way beyond value of the goods.

6.1 Counsel further submitted that in any case seizure of 20 containers is illegal. There was no mis-declaration or attempt on part of the Petitioners to seek exemption from import duty. He relied on provision of Sections 110 and 111 of the Customs Act, to contend that such seizure is unauthorised.

6.2 Counsel further pointed out that replies fled by the Respondents linking the conditions of previous clearance of the goods is wholly impermissible. Previous goods were released either provisionally or on final assessment. Such provisional or final assessments have not been reopened. No show cause notices have been issued. On mere suspicion that goods of previous consignments were also not covered under the exemption notification, condition for release of present consignment cannot be regulated.

7. On the other hand, counsel for the Revenue opposed the petition contending that the Petitioners mis-declared the goods to be of origin of Srilanka when in-fact origin of goods was either Indonesia or Singapore. This was done to avail import duty exemptions. In the past also, several consignments of the Petitioners had been cleared which also suffer from such mis-declarations.

7.1 With respect to 20 containers covered under seizure panchnama dated 1-2-2011, he submitted that Petitioner had mis-declared country of origin of the goods.

8. Having thus heard learned Counsel for the parties, we first propose to tackle the issue of seizure of 20 containers under seizure panchnama dated 1-2-2011. With respect to this seizure, we find that Petitioners had at this stage not insisted for exemption from payment of import duty. Petitioners had written letter to the Customs Authorities that in controversial circumstances, the Petitioners may be permitted to clear the goods on payment of full duty under protest subject to their further rights. The Petitioners had filed bill of entry only on 12-1-2011 by which time more than once the Petitioners had written to the Customs Authority that they may be permitted to clear the goods upon payment of full duty under protest.

9. Under the circumstances, we do not find that any condition should be attached on clearance of these goods such as additional bond or security in form of bank guarantee. On the condition that Petitioners pay full import duty, if they so

chose, under protest, such goods can be cleared subject to further proceedings between the parties.

10. With respect to remaining 12 containers covered in seizure panchnama dated 4-1-2011, we find that in view of facts on record it would'' fee open for the Customs Authorities to insist that the Petitioners pay full import duty and also give bond for the entire amount of value of the goods, 25% of which may be in form of bank guarantee as envisaged in circular No. 686/2/2003 dated 2-1-2003. However, to permit the Respondents to impose further conditions on the ground that in the past the Petitioners had cleared goods without payment of import duty by making false declarations, at this stage, in our opinion would be prejudging the issue. Since all proceedings are still at adjudication stage, it would not be appropriate on our part to make any conclusive observations with regard to the contentions raised by the both sides. However, suffice it to say that when the past clearances have not been, reopened either by issuance of show cause notice or any other mode envisaged under the Customs Act and Rules thereunder, merely on the ground that in the present case, department has reason to believe that there are mis-declarations, to permit them to impose additional conditions covering past consignments would not be possible.

11. In, the result, petition is disposed of with following directions:

(i) 20 containers of the Petitioners covered under seizure panchnama dated 1-2-2011 shall be released provisionally on Petitioners paying full import duty.

(ii) 12 containers of the Petitioners covered under seizure panchnama dated 4-1-2011 shall be released on Petitioners paying full import duty and giving bond for full amount of value of goods including 25% bank guarantee as provided in circular No. 686/2/2003 dated 2-1-2003.

(iii) Impugned order dated 25-2-2011 stands modified accordingly.

12. In view of the above directions, we do not find it necessary to decide the question of validity of seizure.