(2015) 08 MAD CK 0049

In the Madras High Court

Case No : W.P. No. 15472 of 2015 and M.P. No. 1 of 2015

ELPE Labs APPELLANT

Vs

The Commissioner of Customs (Seaport Import), Chennai II and Others RESPONDENT

Date of Decision : 18-08-2015

Acts Referred:
Customs Act, 1962 — Section 17(5)

Citation : (2015) 325 ELT 716

Hon'ble Judges : R. Mahadevan, J.

Bench : Single Bench

Advocate : B. Sathish Sundar, for the Appellant; K. Mohanamurali, Senior Panel Counsel, for the Respondent

Judgement

R. Mahadevan, J.—Heard the learned counsel for the petitioner and the learned Sr. Panel Counsel for the respondents.

2. This writ petition has been filed for the issue of a writ of mandamus to direct the respondents to cause and release of the goods (3 MTS of L-ASCORBATE 2-PHOSPATE - 35 PCT AND 2 MTS MONO POTASSIUM PHOSPATE) covered under Bill of Entry No. 7349429 dated 12.11.2014 on such terms and conditions prescribed by this Court.

3. The petitioner, being a small scale industry recognized by the Directorate of Industries and Commerce, Government of Karnataka and registered on 08.11.2005, which is a proprietary concern, involved in the manufacture of animal feeds supplements and foods supplement. The petitioner entity has been conducting its business with utmost diligence and compliance of the statutory obligations cast on it. In the course of the business, it placed an order with M/s. Continent Phosphorus Company Limited, Sichuan, Peoples Republic of China, for the supply of (3 MTS of L-ASCORBATE 2-PHOSPATE - 35 PCT AND 2 MTS MONO POTASSIUM PHOSPATE). The said supplier raised an invoice dated 15.10.2014, for supply of the same. Along with the invoice, the supplier furnished packing

list, certificate of analysis and the relevant documents. The petitioner had also made payment for the said goods in full through its Bankers. Thereafter, under the Bill of Lading dated 28.10.2014, despatched the goods from Shanghai Seaport to Chennai Seaport. The goods arrived in the first week of November 2014 and the petitioner filed Bill of Entry No. 7349429 dated 12.11.2014 with the office of the respondent for clearance of the same. According to the petitioner, the goods under import were to be used as raw material for manufacture of animal feeds supplement and not for pharmaceutical use. He would further submit that the petitioner classified the first lot of goods viz., L-ASCORBATE 2-PHOSPATE - 35 PCT under Customs Tariff Heading 29362700 and the 2nd lot of goods MONO POTASSIUM PHOSPATE under Customs Tariff Heading 2835 2400. However, the respondents raising certain objections as to the leviability of the 1st lot of goods to Anti Dumping Duty, have refused to release the entire consignment. Therefore, the petitioner submitted a letter dated 05.12.2014 to the 3rd respondent, enclosing all the documents and indicating that the 1st lot of goods have been wrongly classified and therefore, requested for recalling the Bill of Entry and reassess the same under HSN Chapter 2309. By a communication dated 05.02.2015, the petitioner has sought for bonding of the goods to avoid demurrage and also requested a speaking order from the 3rd respondent to explain the views for reassessment as sought for. Thereafter, the petitioner submitted a detailed reply to the query vide letter dated 04.03.2015, enclosing materials to justify the reclassification, pursuant to the personal representations on 09.12.2014 and 25.02.2015. However, by a communication dated 25.03.2015, the 3rd respondent has rejected the demand of the petitioner for reclassification and for a speaking order. Pursuant to the same, the petitioner represented before the 2nd respondent by letter dated 27.03.2015 for reassessment of the goods and for release of the imported goods. However, there was no response. Hence, the petitioner is before this Court.

4. The learned counsel for the petitioner submits that there is no dispute not only with regard to the validity and the use of the goods, but also with regard to valuation and the only dispute is whether the 1st lot of goods i.e., L-ASCORBATE 2-PHOSPATE - 35 PCT attract Anti Dumping Duty or not. According to him, the said goods do not attract Anti Dumping Duty for the reason that they are not covered under the relevant Notification governing levy of Anti Dumping Duty. Further, according to the learned counsel, earlier, the petitioner has sought for reclassification of the goods under HSN Chapter 2309 and not under HSN Chapter 2936, some of which covered under the said heading attracts Anti Dumping Duty, however, the 3rd respondent has not acceded to the request of the petitioner for reclassification. That apart, according to the learned counsel for the petitioner, the respondents have not chosen to allow bonding of the goods nor they have released the second lot of goods MONO POTASSIUM PHOSPATE, which has been correctly classified and found to be in order.

5. It is the contention of the learned counsel for petitioner that the respondents ought to have at least allowed provisional clearance and release of the goods,

pending the dispute. Hence, the petitioner has come up with this writ petition. Besides, according to him, the goods under import are highly sensitive to the vagaries of the Chennai weather and hence prolonged storage may cause them to deteriorate in quality rendering the import futile, causing serious prejudice and loss to the petitioner entity. He would further submit that the goods under import are lying with CFS incurring very heavy demurrage and container detention charges.

6. The learned counsel for the petitioner would further submit that demand of Anti Dumping duty in terms of notification No. 067/2009 on the petitioner is unsustainable and even if such a demand is made, the respondents ought to have issued a demand notice to that effect. However, without doing so, the respondents are simply holding on the goods, detriment to the petitioner entity. Hence, the learned counsel for the petitioner has prayed for allowing of the writ petition.

7. On the other hand, the learned Sr. Panel Counsel appearing for the respondents submitted that according to the notification No. 67/2009 dated 19.11.2014, vitamin C and its synonyms attract Anti Dumping Duty when imported form China at the rate of USD 3.99 kgs. The subject bill of entry was assessed by charging the ADD. The subject bill of entry was assessed in the declared Customs Tariff Heading. However, when ADD was charged on the goods, the petitioner came up with an alternate classification for the goods with an intention to avoid payment of ADD. The item under import is a separately chemically defined organic compound and the classification claimed by the petitioner is under Vitamin C and its derivatives is proper and correct. In terms of Section 17(5) of the Customs Act, 1962, a speaking order is required to be issued when re-assessment is contrary to self assessment done by the importer. It is his contention that the department has accepted the classification claimed by the importer under self assessment and ADD was charged on the goods. The said decision was also communicated to the petitioner vide letter dated 25.03.2015 and hence the contention of the petitioner that the correct classification of the items is under Customs Tariff Heading 2309 is incorrect and cannot be accepted. According to him, if the goods are to be classified under 2309 heading, then, it has to be a preparation, whereas the item imported is only a raw material, which is used in the manufacture of food supplement, as declared by the importer. Hence, the re-classification sought for by the petitioner under 2309 cannot be accepted. Further, the item imported is a separately chemically defined organic compound and the appropriate clarification is under Customs Tariff Heading 29362700 only and ADD is chargeable on the goods falling under the said Customs Tariff Heading. Therefore, the assessment done by the respondent is correct and as per law.

Based on these, the learned Sr. Panel Counsel appearing for the respondents has sought for dismissal of the writ petition.

8. This Court considered the submissions made by the learned counsel on either

side and perused the materials available on record.

9. The issue relating to classification of items viz, whether the goods would attract Anti Dumping Duty or not, can be looked into by the authority concerned by adopting proper adjudication process followed by a speaking order, which is yet to be made. Hence, such exercise shall be completed by the respondents within a period of four weeks from the date of receipt of a copy of this order. In the meanwhile, for the purpose of release of goods i.e., L-ASCORBATE 2-PHOSPATE - 35 PCT, 50% of the Anti Dumping Duty as determined shall be paid by the petitioner and for the balance amount, a bond as directed by the authority concerned is directed to be executed by the petitioner. On such compliance, the goods shall be released forthwith. As far as the other item viz., MONO POTASSIUM PHOSPATE, it is mutually agreed by both the counsel on record that there is no dispute. Hence, the respondents are directed to release the said goods forthwith.

With the above directions, the writ petition is disposed of. No costs. Connected miscellaneous petition is closed.

