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(2010) 12 KL CK 0084

In the High Court Of Kerala

Case No : W.A. No''s. 2048, 2050, 2051 and 2052 of 2010

Global Industries and Shree Traders — APPELLANT

Vs

The Commissioner of Customs and The Assistant Commissioner of Customs — RESPONDENT

Date of Decision : 06-12-2010

Acts Referred:
Customs Act, 1962 — Section 12, 14, 17, 18
Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 — Rule 5

Citation : (2010) 12 KL CK 0084

Hon'ble Judges : J. Chelameswar, C.J;P.R. Ramachandra Menon, J

Bench : Division Bench

Advocate : Madhu Radhakrishnan, for the Appellant; John Varghese, SC for Cen. Board of Excis, for the Respondent

Judgement

J. Chelameswar, C.J.—These four appeals arise out of a common judgment dated 22nd November, 2010 in W.P.(C) No. 33810 of 2010 and connected cases. All the Appellants are proprietary concerns. They have imported ''Betel nuts'' from Indonesia. Though the Appellants have presented the Bill of Entries for home consumption, the goods are not yet cleared for home consumption as the assessment is not yet complete, since there is dispute regarding valuation of the goods imported.

2. The brief history and background of the case is as follows: By notification dated 4th June, 2008 issued by the Director General of Foreign Trade purporting to be in exercise of the power under Foreign Trade (Development & Regulation Act), 1992 read with paragraph 2.1 of Foreign Trade Policy 2004-09, it was notified that ''Betel nuts'' (whole) could be imported freely into India provided the cif value of the commodity is Rs. 35/- per kilogram and above. In other words, if the value of the imported Betel nuts'' is declared to be Rs. 35 per kilogram and above, the requirement of obtaining any licence under the relevant law is dispensed with. The legality of the said notification, in so far as it prescribes the minimum value of the imported item, came tube challenged

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before this Court as well as before the other High Courts of this country. By judgment dated 02.11.2010, the said notification was declared as illegal by a learned Judge of this Court and were informed that a similar view was taken by the Madras High court in S. Mira Commodities Pvt. Ltd. and Others Vs. Union of India (UOI) and Others, . When the consignments, which are in question in these four appeals arrived and sought to be cleared by presenting the bills of entry for home consumption, it was endorsed on the bills by the authorities of the Customs that the value declared by the importers appeared to be very low compared to the contemporaneous imports made in other ports at the relevant point of time and therefore directed the importers to furnish further information including the documents in support of their claim of value of the goods. It was further indicated that failing production of such materials, value of imported materials would be re-fixed under Rule 5 of the Customs Valuation (Determination of Value of imported Goods) Rules 2007.

3. It appears that the Appellants'' request, to release the goods on the basis of a provisional assessment as the Appellants would require some more time to produce the necessary documents in support of their claim with regard to valuation of the goods, was not accepted by the first Respondent. Therefore the Appellants approached this Court by filing various Writ Petitions, seeking for a direction to the Respondents to release the imported materials on the basis of the provisional assessment. By judgment under appeal, the learned Judge of this Court disposed of the writ petitions declining to grant any direction for provisional assessment and issued certain further directions. The operative portion of the judgment is as follows:

7. In that view of the matter, the prayer sought to direct the Respondents to provisionally assess the cargo of betel nuts imported by the Petitioners cannot be granted.

8. However, I record the submission of the counsel for the Respondents that it will be open to the importers to appear before the proper officer under the Act, and that after hearing, an order of assessment will be passed on the same day itself and that it will be open to the Petitioners to seek release of the cargo on that basis. I also record that soon thereafter, speaking orders will be passed by the Respondents, enabling the importers to seek their remedies against the assessments completed.

Hence the appeals.

4. Section 12 of the Customs Act, 1962 authorises levy of duty of customs as specified under the Customs Tariff Act, 1975 or any other law, on goods imported into India. Section 14 provides for valuation of such imported materials. Section 17 of the Customs Act provides for assessment of duty and also stipulates the rights and obligations of the importers as well as the powers and duties of the authorities entrusted with the responsibility of making assessment of customs duty. Section 18 provides for making the provisional assessment of duty in

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certain cases

5. u/s 17 of the Act, the proper officer making the assessment may call upon the importer to produce any document or information, which in the opinion of the officer is relevant for making the assessment. u/s 18, provisional assessment is contemplated in various situations. The relevant in the context of the present appeals is the situation contemplated u/s 18(1)(c), which stipulates that where the importer has produced all documents and furnished full information believed by him to be necessary and sufficient for the assessment of the duty, but the proper officer deems it necessary to make further enquiry for assessing the duty, the proper officer is authorized to make provisional assessment on condition that the importer furnishes such security as may be specified by the proper officer for securing payment of duty leviable on the imported goods/material. Statutory rules are framed regarding the method and manner in which valuation of the goods imported are to be made, known as Customs Valuation (Determination of Value of imported Goods) Rules, 2007. It may not be necessary for us to go into further details of the provisions of the Act or rules for the purpose of disposing of the present Writ Appeals .

6. All the Appellants are seeking for release of the goods imported by them, after making a provisional assessment of the duty leviable on such goods, in view of the fact that the Appellants are desirous of adducing further evidence in support of their claim regarding the value of the materials imported by each one of them. According to the Appellants such materials are to be secured by them from the country of the origin of the goods and therefore, they require some more time to secure such documents. The Appellants, however submit and pray that in view of the fact that the imported goods are perishable in nature and also the detention of the goods mulct the Appellants with liability to pay demurrhage, etc. to the Port, the goods may be released immediately on making provisional assessment.

7. Heard Adv. Shri John Varghese, the learned Standing Counsel for the Respondents.

8. In the facts and circumstances of the case we are of the opinion that the ends of justice will be met by directing the Respondents to release the goods (Betel Nuts) imported by each of the Appellants in each of these appeals and subject matter of the dispute in these appeals, by making the provisional assessment forthwith, on the basis of such valuation as the first Respondent deems fit and proper. After such assessment, the Appellants shall pay of the duty and furnish Bank guarantee for the remaining half of the duty payable on the basis of such provisional assessment.

9. The Appellants also undertake to produce whatever materials they want to furnish in support of their claim within two weeks from today and to appear before the first Respondent along with the materials on or before 21st December 2010. On such appearance, the final assessment or liability of the Appellants shall be made by the Respondents. The tax paid and the Bank guarantee

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furnished, pursuant to the order passed today, shall be adjusted according to the requirement of final assessment orders. The Respondents are further directed to make provisional assessment within a period of three days from today.

10. However in W.A. No. 2048 of 2010 there are two Appellants and it is brought to our notice that in so far as the first of the said Appellants is concerned a final assessment order has been passed on 23.11.2010 and therefore the appeal, in so far as the said first Appellant is concerned, has become in fructuous and it is open to the first Appellant to pursue such remedies, which are available to him under law, if he is, in any way, aggrieved by the final order of assessment.

The Writ Appeals are disposed of as above.

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