(2016) 06 MAD CK 0095

In the Madras High Court

Case No : Writ Petition No. 18713 of 2016 and W.M.P. No. 16344 of 2016

Green Line APPELLANT

Vs

Commissioner of Customs, Chennai-IV RESPONDENT

Date of Decision : 22-06-2016

Acts Referred:

Citation : (2016) 340 ELT 140

Hon'ble Judges : T.S. Sivagnanam, J.

Bench : Single Bench

Advocate : Shri A.K. Jayaraj, Advocate, for the Petitioner; Shri T. Chandrasekaran, Standing Counsel, for the Respondent

Final Decision : Disposed Off

Judgement

T.S. Sivagnanam, J.—Heard Mr. A.K. Jayaraj, learned counsel for the petitioner and Mr. T. Chandrasekaran, learned Standing Counsel for the respondents. By consent, the Writ Petition itself is taken up for final disposal.

2. I have carefully considered the submissions on either side and perused the materials placed on record including the counter affidavit filed on behalf of the respondents and the report submitted by the Deputy Commissioner, Special Intelligence and Investigation Branch, Customs House, Chennai, dated 21-6-2016.

3. The petitioner is M/s. Green Line and this writ petition has been filed representing that M/s. Green Line is a Partnership Firm and Mr. S. Mohamed Kalith is one of the partners and other partner is Mr. S. Ariya. The imported goods are Sub-woofers, Amplifiers and CD players of the brands Sony, JVC Kenwood and Pioneer and a Bill of Entry No. 4497899, dated 8-3-2016 was filed by the petitioner for clearance of the goods. The officers of the Customs noticed that the goods were grossly undervalued and some of the items were mis-declared. Therefore, the matter was referred to the Special Intelligence and Investigation Branch (SIIB). On examination of the Cargo by the SIIB, it was

reported that the products are all manufactured by well known manufacturers and the bill of entry has been filed grossly undervaluing the goods. It is stated that M/s. Green Line had earlier cleared three imports through the Customs Brokers M/s. The General Shipping and Forwarding and the present bill of entry was filed by M/s. Green Line directly.

4. The stand of the Department is that as per IEC profile of M/s. Green Line issued by the Joint Director General of Foreign Trade, Chennai, it is a proprietorship concern and Mr. S. Ariya residing in Govindappa Naicken Street, Sowkarpet, Chennai has been shown as a proprietor. The office of the proprietorship concern is stated to be at No. 222/93, Rangarajapuram Main Road, Kodambakkam, Chennai. Since the bill of entry was presented by M/s. Green Line represented by Mohamed Kalith claiming himself to be a partner of M/s. Green Line and this representation having not borne out in the IEC profile, the Department took up the matter for further examination. A search was conducted in the residence of the Mohamed Kalith and it is admitted by the respondents in the counter affidavit that no incriminating documents were available. When the search party went to the office address of M/s. Green Line, it was found to be locked and the landlord informed that the office has been remained closed for more than six months and the lease agreement with M/s. Green Line had expired in January, 2016 itself. Thereafter, with the permission of the landlord, it appears that the office was opened and search was conducted in which it is stated that there were no incriminating documents available. The whereabouts of Shri Ariya are not known and therefore, the Department has prima facie concluded that the IEC profile obtain in the name of M/s. Green Line represented by Mr. Ariya as proprietor is by giving a fake address. The goods have been seized under Section 110 of the Customs Act on 26-4-2016 for further investigation. Shri Mohamed Kalith was summoned to the office of the respondents and statement under Section 108 of the Customs Act has been recorded. Now the only issue to be considered is as to whether the provisional clearance of the goods should be permitted.

5. From the note submitted by the Deputy Director (SIIB) dated 21-6-2016, it is seen that Mr. Mohamed Kalith had appeared in response to a summons and he has given statement and Mr. Kalith would state that he is a partner along with Mr. S. Ariya; but however, the whereabouts of Ariya are not known; but his relatives are in Chennai and he has been informed that Ariya is expected to be back in Chennai in 10-15 days.

6. Admittedly, the goods are not the prohibited items and the stand of the Department opposing the prayer made by the petitioner for provisional release is primarily on two grounds. Firstly, on the ground of undervaluation and mis-description and secondly, on the controversy with regard to the IEC code. So far as the valuation is concerned, in Paragraph 14 of the counter affidavit, the respondents have provisionally worked out the actual duty amount, based on the manufacturers'' import prices at Rs. 22.72 lakhs as against the petitioner''s self-

assessed duty at Rs. 4,53,017/-. With regard to the second issue regarding the IEC code, since the whereabouts of Shri Ariya were not known, the Department raises a serious doubt as to whether Mohamed Kalith claiming himself to be a partner of M/s. Green Line could seek for clearance of the goods. It is not in dispute that the bill of entry has been lodged individually by Mr. Kalith. A search conducted in his residential premises and the office premise of M/s. Green Line did not yield any results nor any incriminating documents have been seized. That apart, Mr. Mohamed Kalith has been cooperating with the investigation and statements have been recorded under Section 108 of the Act. That apart, the actual duty amount has been worked out by the Department based on manufacturers import prices. Hence, this Court is of the view that the petitioner may be permitted to clear the goods subject to certain stringent conditions.

7. Though not on identical circumstances, but under similar circumstances, this Court has permitted provisional clearance of goods subject to certain conditions after taking into consideration orders passed by the Hon''ble Division Bench in (i) Review Application No. 89 of 2011 in W.A. No. 582 of 2011 and, dated 25-4-2011 [Commissioner of Customs (Airports), Chennai and Others v. T. Elavarasan]; (ii) W.A. (MD). 548 of 2012, dated 14-8-2012 (The Commissioner of Customs, Tuticorin v. Empire Exports) 2013 (287) E.L.T. 41 (Mad.); and (iii) W.A. No. 758 of 2014, dated 20-6-2014 (The Chief Commissioner of Customs and Others v. M/s. Sri Laxmi Vijay Saw Mill, Bangalore and Another) and these orders were followed by me in W.P. No. 21194 of 2014, dated 8-10-2014 by which the petitioner was permitted to clear the goods on payment of the entire duty as assessed by them; pay a portion of the differential duty on the admitted value fixed by the Department; and execute a bond for the remaining amount. As against the said order dated 8-10-2014, no appeal has been preferred and the goods have been released. Thus, the Courts under specific circumstances have exercised power and issued directions for provisional release. However, there cannot be a straight jacket formula in all cases and each case has to be decided on the facts placed before the Court. In the preceding paragraph, this Court has pointed out as regards the issue raised by the Department. Therefore, sufficient safeguards should be made to protect the interest of revenue while directing provisional release of the goods.

8. In the light of the above discussions, the Writ Petition is disposed of with the following directions :

(i) The petitioner is directed to remit the entire duty as assessed by them;

(ii) The petitioner is directed to pay 50% of the differential duty which has been arrived at by the Department as Rs. 22.72 lakhs;

(iii) The petitioner is directed to execute a bond for the remaining amount to the satisfaction of the respondents.

(iv) The petitioner shall execute an indemnity bond stating that in the event of Shri S. Ariya raising any claim over the goods or concerning the use of IEC code issued in favour of M/s. Green Line, the petitioner Mr. Mohamed Kalith alone would be fully responsible for the same and no liability can be fastened on the respondent Department and the indemnity bond should be furnished in the form approved by the respondents.

9. Subject to compliance of the above conditions, the goods shall be released by the respondents. The respondent-Department are directed to proceed with the adjudication and while issuing show cause notice, notices should be issued to the Firm of the M/s. Green Line as well as to Mr. Mohamed Kalith and Mr. S. Ariya and all the parties should co-operate with the adjudication proceedings. No costs. Consequently, connected Miscellaneous Petition is closed.