(2005) 09 DEL CK 0016

In the Delhi High Court

Case No : Writ Petition (C) 13173 of 2005

Haryana Acrylic Manufactur APPELLANT

Vs

Commissioner of Customs, ICDN RESPONDENT

Date of Decision : 23-09-2005

Acts Referred:
Customs Act, 1962 — Section 17

Citation : (2005) 124 DLT 238

Hon'ble Judges : Vikramajit Sen, J

Bench : Single Bench

Advocate : G.L. Rawal, for the Appellant; Rajeeve Mehra, for the Respondent

Final Decision : Allowed

Judgement

Vikramajit Sen, J.—Rule.

2. The facts are not in contest and Therefore proceed to decide the Writ Petition on merits.

3. The facts of the case are that a consignment of Aluminium Scrap, Trump/TAPID/Testy/Scroli was got inspected by the Petitioner from Gulf Inspection International Company, (KSC) Kuwait, which had been notified as an authorised inspection agency by Public Notice dated 19.1.2005 issued by the Director General of Foreign Trade, Government of India. It is the admitted case of the parties that it is the DGFT who is empowered to issue Public Notices of this genre and on this subject.

4. The inspection was carried out on 18.6.2005. The case of the Respondent is that two days later i.e. on June 20, 2005, a Circular was issued by the Govt. of India, Ministry of Finance, Department of Revenue, New Delhi to all Chief Commissioners of Customs/Excise etc. to the effect that a Pre-inspection Certificate dated 15.11.2004 issued by the said inspectors, namely, Gulf Inspection International Company, (KSC) Kuwait was found to be unsatisfactory/incorrect. By means of this Circular, Therefore, it was intimated that the Ministry

of Commerce had decided not to accept any Pre-inspection Certificates issued by Gulf Inspection International Company, (KSC) Kuwait.

5. The Bill of Lading of this consignment is dated 3.7.2005 and on its arrival in India, a Bill of Entry dated 29.7.2005 was issued. It is also common ground that an inspection had been carried out u/s 17 of the Customs Act on its arrival in India. This is because upon a Bill of Entry being presented an inspection invariably follows in normal course, the degree of inspection may vary from a sample ten percent (10%) to a complete or total one; in the present case the total consignment has been inspected and found to be in order. However, the consignment has not been released to the Petitioner for the reason that the Inspection Report is of a company which has been allegedly dis-empowered from doing so in terms of the Circular dated 20.6.200

6. It is also not in contest that till date no Public Notice of the type issued by the DGFT dated 19.1.2005 mentioned above has not been issued. In Mohinder Singh Gill v. The Chief Election Commissioner, New Delhi, AIR 1978 Supreme Court 851, it has been pronounced that if an action has to be taken in a particular manner then it must be carried out in that manner or not at all. If the power to issue notices is reposed in the Director General of Foreign Trade, it is that Officer and no other person who can issue such Public Notices. Reliance, Therefore, on a Circular signed by the Under Secretary, Govt. of India, Ministry of Finance will not have any application on citizens of India.

7. Even apart from this consideration the fact remains that the inspection was carried out prior to the issuance of the Circular dated June 20, 2005, which cannot by any reason, be impregnated with retrospective effect. Even if this were not so for the reasons adumbrated in Mohinder Singh Gill''s case (supra), the Circular dated 20th June, 2004 would not have any legal efficacy. It has been vehemently stressed by learned counsel for the Respondent that the Circular was issued in public interest as it as found that some consignments imported into the country contained discarded but live ammunition and those consignments had been inspected by Gulf Inspection International Company, Kuwait. This event, however, would justify the exclusion of Gulf Inspection International Company, Kuwait from the list of Inspection agents, but it would not validate the enforcement of that decision by means of a Circular and not by means of a DGFT Public Notice issued by the Director General of Foreign Trade. It has also been contended that the Circular dated 20th June, 2005 had been released on the internet. It is for Parliament to decide that a release on the internet would be sufficient notice to the public at large thereby rendering the DGFT Public Notice as superficial or superseded. Nothing has been shown in this regard.

8. Reliance has been placed on the decision of the Hon''ble Supreme Court in Union of India (UOI) and Another Vs. Shree Ganesh Steel Rolling Mills Ltd. and Another, , in which paragraph 16 of the of the Export and Import Policy which is in para materia to the provisions which apply in the present case, was held not to have retrospective effect.

9. So far as the present case is concerned the consignment has admittedly been inspected in Tughlakabad and has been found to contain only Aluminium Scrap as per the invoice. The Circular issued by the Ministry of Finance does not have legal efficacy, the Public Notice issued by the DGFT continues to hold sway, and the Inspection has been carried out in conformity therewith.

10. In these circumstances, the Writ Petition is allowed and the Respondents are directed to release the consignment to the Petitioner if all other requirements have been met.

11. Parties shall bear their respective costs.

