(2016) 10 P&H CK 0006

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 24836 of 2015 (O&M)

Hlg Trading APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 24-10-2016

Acts Referred:

Citation : (2017) 347 ELT 9

Hon'ble Judges : Rajesh Bindal and Harinder Singh Sidhu, JJ.

Bench : Division Bench

Advocate : Shri Jagmohan Bansal, Advocate, for the Petitioner; Shri Sharan Sethi, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Rajesh Bindal, J.—The petitioner imported 38,134.90 kgs. of consignment, which was declared as left over stock of Plastic Film Plain/Flexible in variable size rolls of Printed/Unprinted/defective/colour/in mixed microns/GSM including Multilayer. The declared value in the bill of entry was Rs. 19.63 per kg. The department sought to dispute the nature of the goods imported. The petitioner was asked to bifurcate the consignment, as in the opinion of the Department, part of the consignment was EVA sheet. The department assessed the valuation of part of the consignment weighing 22,094 kgs. @ Rs. 55.16 per kg.

2. The stand of the counsel for the petitioner is that the aforesaid valuation was done without any opportunity of hearing to the petitioner. As there was dispute regarding the nature of goods for the second part of the consignment weighing 16,040 kgs. and Central Revenue Control Laboratory also could not opine on that, this court vide order dated 29-7-2016 sent the samples to Central Institute of Plastic Engineering and Technology, Lucknow. The reports were received giving opinion on the contents of various samples sent. The valuation of the second part of the consignment regarding calculation of import duty is yet to be made.

3. Learned counsel for the petitioner submitted that valuation of part of the

consignment was made by the department without affording opportunity of hearing to the petitioner and the same was increased from Rs. 19.63 per kg., as declared by the petitioner, to Rs. 55.16 per kg., but the material relied upon in the order dated 26-10-2015 was not confronted to the petitioner. He further submitted that the department will not fetch even Rs. 19/- per kg. in case effort is made by it to sell the same in open market. He further argued that in view of the assessment of valuation of part of the consignment at Rs. 55.16 per kg., the case of the petitioner to state that value of the second part of the consignment, which is yet to be assessed, was less, will not be accepted by the competent authority in view of the earlier order passed. He submitted that the order dated 26-10-2015 having been passed without opportunity of hearing to the petitioner be set aside and the matter be remanded back to the competent authority for assessment of value of the entire consignment after hearing the petitioner and also taking into consideration the test report received from Central Institute of Plastic Engineering and Technology, Lucknow.

4. Learned counsel for respondent No. 2 fairly did not dispute the fact that for the purpose of valuation of the part of the consignment, no notice was issued to the petitioner, though he was asked to segregate the consignment, as in the opinion of the department, it contained different material. He further submitted that value of the leftover consignment, samples drawn out of which were sent for testing to Central Institute of Plastic Engineering and Technology, Lucknow, can be done in view of the reports received, after hearing the petitioner.

5. After hearing learned counsel for the parties and considering the undisputed stand of the parties, as noticed above, the order dated 26-10-2015 assessing the value of the part of the goods imported deserves to be set aside for the reason that no opportunity of hearing was afforded to the petitioner before passing the order and the material relied upon therein was not confronted. Ordered accordingly.

6. As far as the second part of the consignment is concerned, it could not be assessed earlier as there was no definite opinion about the goods imported. The same having been received now in the form of test report from Central Institute of Plastic Engineering and Technology, Lucknow, the value thereof is also required to be assessed.

7. As the order dated 26-10-2015 has been set aside, meaning thereby the value of the entire imported consignment is to be assessed by the competent authority. Let the needful be done after issuing notice to the petitioner as expeditiously as possible as the goods were imported in June, 2015.

8. The petition stands disposed of.

9. With reference to the issue raised vide order dated 28-9-2016 passed by this Court, the matter be listed in Court on 16-12-2016.

