(1994) 11 DEL CK 0016

In the Delhi High Court

Case No : Civil Writ Petition No. 3655 of 1994 and C.M. 6740/94

International Office Machies APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 01-11-1994

Acts Referred:

Citation : (1995) 79 ELT 25

Hon'ble Judges : D.P Wadhwa, J;Cyriac Joseph, J

Bench : Division Bench

Judgement

D.P. Wadhwa, J.—The petitioners seeks a writ of mandamus or any other appropriate writ, order or direction directing the respondents 3 and 4, namely, the Collector of Customs and the Director of Revenue Intelligence, to release Bill of Entry No. 243838, dated 26th August, 1992 and other connected documents, and to clear the goods of the petitioner covered under the said Bill of Entry, and that too without payment of any demurrages/rent or other charges. In the alternative it is prayed that these two respondents be directed to issue detention certificate to the petitioners. First petitioner, as the name shows, is a private limited company and the second petitioner is one of its Directors. There are four respondents. Respondents 1 and 2 are the Union of India in the Ministry of Finance, Department of Revenue, and the second respondent is the Air Cargo Unit, IGI Airport, New Delhi.

2. Petitioner imported certain goods being the components of photo copying machines and filed Bill of Entry for clearance of the goods. The petitioner had claimed import of the said components under Para 22 of the Import-export Policy, 1992-97. There was some intelligence with the officers of the fourth respondent that the goods were not properly described. Accordingly, a notice was issued to the petitioners to show cause as to why the goods be not confiscated for violation of the provisions of Section 111(d) and (m) of the Customs Act, 1962, and why personal penalty be not imposed upon the company as well as Directors. Adjudication proceedings were held. It is not necessary for us to refer

to the same in any detail expect to note that by order dated 17th June, 1994 the Additional Collector of Customs, New Delhi, dropped the show cause notice and did not find any case for imposition of any penalty on the petitioners. Result of this was that the goods of the petitioners which they had imported should have been released as per the Bill of Entry. This was not done and the petitioners, Therefore, approached this Court through this petition which was filed on 31 August, 1994.

3. We issued notice to show cause as to why rule nisi be not issued and also issued notice on the application of the petitioners seeking interim relief. An affidavit in reply was filed by the Assistant Director Directorate of Revenue Intelligence. He said the order of the Additional collector of Customs was not correct and the department had decided to file an appeal before the Collector of Customs (Appeals), New Delhi, and that steps were being taken to file the appeal expeditiously and in any case within the period of limitation. It was submitted on 21st October, 1994 that the appeal had since been filed but it had not been listed before the Collector of Customs (Appeals) and no interim orders obtained. Even now the position continues to be the same, according to the learned counsel Mr. Aggarwal, learned counsel for respondent No. 4, submitted that this court might hold over this matter till the Collector of Customs (Appeals) was able to hear the appeal filed by the Department and interim directions obtained from him. This, to our mind, is rather an unusual request. No season has been advanced as to why it has not been possible to have the matter heard by the Collector (Appeals) when the appeal has already been filed before him. If we accept this request it would mean that while the Collector of Customs (Appeals) has not passed any order, this Court is exercising that jurisdiction and giving interim orders which is the function of the Collector of Customs (Appeals) himself. The petitioners cannot go on waiting indefinitely [sic] respondents to have the matter heard before the Collector of Customs (Appeals) and orders obtained. As far as we see the order of the Additional collector of Customs should have been complied by the respondents within reasonable time. Already 4-1/2 months have gone by after the order of the Additional Collector of Customs was made which exonerated the petitioners and yet petitioners might be suffering imposition of demurrages/rent charges. In the circumstances of this case, we will direct that the goods of the petitioners as per the Bill of Entry aforesaid be released within fifteen days from today, if in the meanwhile no stay is granted or any other order or direction issued by the collector of Customs (Appeals). We will further direct that the petitioners shall not be burdened with any demurrages or rent charges unless again, of course, the Collector of Customs (Appeals) directs otherwise. The writ petition is allowed in these terms. Petitioners shall also be entitled to costs. Counsel fee Rs. 1,000/-.