(1997) 03 CAL CK 0011

In the Calcutta High Court

Case No : Writ Petition No. 1561 of 1996

Jaibal Bearing and Mills Stores APPELLANT

Vs

Collector of Customs RESPONDENT

Date of Decision : 13-03-1997

Acts Referred:

Customs Act, 1962 — Section 11, 110, 111, 48
Imports and Exports (Control) Act, 1947 — Section 3(2)

Citation : (1998) 97 ELT 411

Hon'ble Judges : Vinod Kumar Gupta, J

Bench : Single Bench

Judgement

Vinod Kumar Gupta, J.—The dispute initially as raised by the petitioner was with regard to the seizure and confiscation of the goods by the Customs Authorities. Later on however when the confiscation order passed by the Additional Collector of Customs was set aside by the Collector of Customs (Appeals), the dispute got converted into one relating to the liabilities of the parties with regard to the payment of the port and demurrage charges. The facts lying in a very narrow campus. The petitioner imported three consignments of goods in the month of April, 1992, whereas the first consignment was cleared and/or released without any problem. The dispute arose with regard to two consignments. It was on June 8, 1992 that both the consignments were seized by the Customs Authorities. Consequent upon the seizure of this two consignments a show cause notice was issued upon the petitioner calling upon the petitioner to show cause and explain as to why the goods covered by both the consignments be not confiscated in terms of Section 111(d) of the Customs Act, 1962. In the two show cause notices, both dated 26-11-1992 governing the two consignments it was alleged that the goods were imported in contravention of Section 11 of the Customs Act read with Section 3(2) of the Imports and Exports (Control) Act, 1947. It was also mentioned in the said show cause notices that the petitioner had not cleared the goods as well. These proceedings ultimately culminated in the passing of the confiscation order whereby the goods were confiscated by the Additional

Collector of Customs absolutely u/s 111(d) of the Customs Act read with the Import and Export (Control) Act, 1947. The orders confiscating the goods were appealed against by the petitioner and the Collector of Customs (Appeals) having been satisfied that the principles of natural justice were violated by the Additional Collector of Customs in passing the impugned confiscation orders inasmuch as no opportunity was provided to the petitioner to putforth his point of view before the adjudicating authority through personal hearing. It was also observed by the appellate authority that the goods covered by the consignments being OGL Items, their absolute confiscation u/s 111(d) of the Act was bad in law. He therefore while setting aside the orders of confiscation remanded the cases to the adjudicating officer to pass a fresh speaking order after granting personal hearing of the petitioner. It was as a consequence of the aforesaid remand orders in both the appeals that the adjudicating officer appears to have decided in March, 1994 to release the goods. The parties are at issue with regard to the actual communication of the order whereby the adjudicating officer decided to release the goods, even though vide a communication dated 11-8-1994 issued by the Assistant Collector of Customs addressed to the petitioner it was decided to allow clearance of the goods on payment of duty and other charges. After the petitioners appear to have received the communication dated 11th August, 1994 the disputes started between the parties with regard to the release of the goods in question minus the petitioners'' liability to pay Port and Demurrage Charges.

2. I have heard the learned Advocates of the parties at a great length with regard to the issues involved in this case. Whereas u/s 48 of the Customs Act it is the obligation of the prescribed Authority to dispose of the goods within 45 days if the goods are not cleared by the importer, the Customs Authority is entitled to seize the goods if there are reasons to believe that the goods are liable to confiscation. The power to seize goods lies with the Customs Authority u/s 110 of the Customs Act and the power to confiscate the goods has been vested in him u/s 111 of the said Act. In the present case the controversy has arisen because both in the impugned Show Cause Notices and in the impugned Confiscation Orders, the Customs Authorities are not very clear as to whether the confiscation was being done because of the non-clearance of the goods by the petitioners or because the goods were liable to confiscation in terms of Section 111(d) of the said Act, read with the provisions of the Import and Export (Control) Act, 1947. It does appear, prima facie, that the Customs Authorities did not properly exercise the jurisdiction in confiscating the goods. This is fortified by the findings and observations of the Collector of Customs (Appeals) who set aside the impugned Confiscation Orders on the ground of violation of principle of natural justice.

3. The point which arises for consideration is as to whether the petitioners are entitled to the release of the goods without being fastened with the liability of paying Port and Demurrage Charges or not. The occasion to consider this point is the fact as to whether the Customs Authorities were justified in initially seizing

the goods and later on confiscating them and if ultimately it is found that the entire exercise done by the Customs Authorities was neither proper nor justified in law, will it be proper still to insist the petitioners on paying Port and Demurrage Charges. Along side this another important question which arises for consideration is as to whether the Port Authority is liable to release the goods in question merely on the issuance of a Retention Certificate by the Customs Authorities, without it being entitled to insist on its right of claiming the Port and Demurrage Charges, notwithstanding the legality of the exercise done by the Customs Authorities.

4. In my view, all these points are of great importance and require detailed consideration and examination. I think, the points are such which require a thorough hearing on various aspects of the matter in the light of the relevant provisions of the Customs Act and the Import and Export (Control) Act, 1947. For the time being, however, I am convinced that the petitioners are entitled to the immediate release of the goods in question without being fastened absolutely and fully with the liability of paying the Port and Demurrage Charges. While saying so I cannot remain oblivious to the fact that the petitioners do appear to have substantially contributed to the delay in the release of the goods in question. There is enough material on record to suggest that the petitioners were both negligent as well as careless at some stages for the delay being caused in the release of the goods. The petitioners cannot be completely exonerated and absolved of their obligation to speedily get the goods released, perhaps at all the stages of the proceeding.

5. For the foregoing reasons, therefore, I direct that this petition be set down for hearing. In the meanwhile I also direct that the respondents shall release the goods in question, covered by both the consignments, on the petitioners paying the Duties leviable on the goods in normal course and upon the petitioners paying the Bank Charges as are also leviable in normal course.

6. So far as the question of payment of Port and Demurrage Charges is concerned, I direct that the Port Authorities shall calculate the Port and Demurrage Charges as are leviable on the goods up till now. The Port Authorities shall intimate this amount both to the petitioners as well as the Customs Authorities. One-third of such amount shall be deposited by the petitioners with the Port Authorities within a period of 2 weeks from the date of intimation of the amount so calculated. The balance two-thirds of such amount so calculated shall be paid by the Customs Authorities to the Port Authorities also within a period of 2 weeks from the date of intimation. On the amount being paid to the Port Authorities in terms of the aforesaid direction, the goods in question shall be released within one week thereafter.

7. The petitioners shall also furnish an undertaking to the effect that if ultimately they fail in the writ application, they shall be liable to pay the Duty which would be paid by the Customs Authorities pursuant to this direction.

8. Let this matter appear in the Hearing List in due course.

9. The oral prayer of the learned Advocate for the Customs Authorities for stay of operation of this order is rejected.

10. All parties concerned are to act on a Xeroxed signed copy of this Dictated Order on the usual undertaking.

