(2016) 06 MAD CK 0003

In the Madras High Court

Case No : Writ Petition No. 20091 of 2016 and W.M.P. No. 17314 of 2016

Jethmal APPELLANT

Vs

Dy. Commr. of Cus. (Group-6), Chennai RESPONDENT

Date of Decision : 15-06-2016

Acts Referred:

Citation : (2017) 346 ELT 104

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

Bench : Single Bench

Advocate : Ms. C. Sangamithirai, Counsel, for the Petitioner; Shri Vikram Ramakrishnan, SPC, for the Respondent

Final Decision : Disposed Off

Judgement

T.S. Sivagnanam, J.—Heard Ms. C. Sangamithirai, learned counsel appearing for the petitioner and Mr. Vikram Ramakrishnan, learned standing counsel appearing for the respondent and with the consent of the either side, the writ petition itself is taken up for final disposal.

2. The petitioner has filed this writ petition praying to quash the order passed by the respondent dated 21-4-2016 by which the respondent declined to release the cargo covered in Bill of Entry No. 293510, dated 24-8-2009. The petitioner had imported three consignment of toys from China and filed three Bills of Entries. However, the department did not permit clearance of the goods and ultimately, the petitioner had approached the Hon''ble Division Bench of this Court by filing C.M.A. No. 3449 of 2013 [2015 (316) E.L.T. 85 (Mad.)] to quash the order passed by CESTAT in Appeal No. C/14/2010, dated 26-10-2010 [2011 (268) E.L.T. 249 (Tribunal)].

3. The Hon''ble Division Bench by its judgment dated 11-8-2014, after considering all the aspects elaborately, disposed of the appeal by issuing the following directions :

"10. This was submitted to the Court. The appellant/importer is agreeable for test on sample basis by Indian Institute of Technology. In order to cut short the litigation, the appeal is disposed of directing the respondent herein to send the representative samples of toys to testing laboratories viz., Indian Institute of Technology (IIT), Chennai-36 as per the procedure and on the basis of such report, appropriate action can be taken thereafter. The Indian Institute of Technology has agreed to have the samples tested at a nominal cost to be borne out by the appellant, for which, the appellant has also consented and IIT should submit a report at the earliest to the Customs Department with a copy to the appellant/importer so as to allow the parties to work out the remedies as per law."

4. Subsequently the petitioner moved a miscellaneous petition in M.P. No. 1 of 2015 [2015 (329) E.L.T. 48 (Mad.)] requesting to clarify the order dated 11-8-2014 passed in C.M.A. No. 3449 of 2013. In the said miscellaneous petition, the following decision was issued :

"2. It is now stated that the Indian Institute of Technology to whom the samples were sent pleaded that they are unable to give a report as they does not have the requisite technology. The Assistant Commissioner of Customs, who has issued a letter dated 1-8-2014 is directed to forward the samples to Central Revenue Control Laboratory, Hills Side Road, Pusa, I.A.R.I., New Delhi - 110 012, as suggested by him forthwith and get a report from the Central Revenue Control Laboratory within a period of four weeks from the date of sending the samples. The Assistant Commissioner of Customs is directed to submit a report on or before 6-4-2015."

5. It is submitted by the learned counsel for the respondent as well as admitted in the impugned order that pursuant to the test report, out of 21 samples except for 2 samples, 19 samples had met the compliances required to be fulfilled and the goods have been released. Now the petitioner requests for release of goods covered in Bill of Entry No. 293510, dated 24-8-2009. The said request has been rejected on the ground that the goods have not been tested. It may be true that the parties, namely the importer and the exporter may be the same as that of the parties in the earlier Bills of Entry which have been cleared. But nevertheless the department cannot be directed to straightaway release the goods without obtaining separate test report, since the samples were not drawn from the consignment which were covered in the present Bill of Entry.

6. The learned counsel for the petitioner submitted that a direction may be issued to the respondent to send the representative samples of the toys covered in the Bill of Entry No. 293510, dated 24-8-2009 to Central Revenue Control Laboratory, New Delhi for testing and based on the test report, the goods may be directed to be released. Further, the learned counsel submitted that a time frame may be fixed for the respondent to complete the entire process.

7. I have heard the learned standing counsel appearing for the respondent on the above submission.

8. As already pointed out, the goods covered in the present Bill of Entry No. 293510 have not been tested. Therefore, without testing those goods, a direction to release the same cannot be issued. Thus, following the earlier direction passed by the Hon''ble Division Bench in CMA. No. 3449 of 2013 (referred supra), there will be a direction to the respondent to forward the representative samples drawn from the consignment covered in the Bill of Entry No. 293510 to Central Revenue Control Laboratory, Hills Side Road, Pusa, I.A.R.I., New Delhi - 110 012, as was done in respect of the earlier consignments and based on the report, the respondent shall proceed further to release the consignment, if the test report certifies that the samples meet the required compliance. The above directions be complied with, within a period of six weeks from the date of receipt of a copy of this order.

9. The writ petition is disposed of with the above directions. Consequently, connected miscellaneous petition is closed. No costs.

