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(2014) 06 MAD CK 0234

In the Madras High Court

Case No : Writ Petition No. 20329 of 2013 and M.P. Nos. 1-3 of 2013

Jumbo Pine Development Ltd. APPELLANT

Vs

C.C. (Imports-Seaport) RESPONDENT

Date of Decision : 10-06-2014

Acts Referred:

Citation : (2014) 309 ELT 608

Hon'ble Judges : B. Rajendran, J

Bench : Single Bench

Judgement

B. Rajendran, J.—Heard Mr. A.K. Jayaraj, learned counsel appearing for the petitioner and Mr. P. Chandrasekar, learned Senior Central Government Standing Counsel appearing for the respondents. The petitioner has come up with the present writ petition for the issuance of a writ of mandamus directing the respondents to release the consignment of Snap Fasteners, Sliders, Elastic Tapes and Sewing Needles and other goods and permit the petitioner to re-ship the consignment of Snap Fasteners, Sliders, Elastic Tapes and Sewing Needles and other goods stuffed in the container bearing No. XINU1504429 and Bill of Lading No. 740200004018, dated 21-1-2012 and imported vide Bill of Entry No. 5970001, dated 10-2-2012 lying in the custody and control of the respondents in the Chennai Port.

2. The petitioner is the registered trade licensee in Hong Kong. The petitioner exported the goods containing Snap Fasteners, Sliders, Elastic Tapes and Sewing Needles and others from Hong Kong to India on a proper bill of lading. When the goods reached Chennai, the same were seized on the ground that the petitioner exported other items apart from the items declared in the Bill of entry. According to the petitioner, the staff of the Warehouse and Packing Department have dispatched the wrong goods lying at the Warehouse instead of the goods as specifically ordered. Therefore, the petitioner requested the authority to re-send the goods to China as the other goods were wrongly sent by the staff of the Warehouse and they were not really intended to send such items. The petitioner

also requested the importer to clear the goods by giving prices of the sewing machine needles. However, the importer has disowned the seized goods. The respondent issued a show cause dated 28-2-2013 to the importer and the same is pending. Since, the buyer has refused to take the consignment, the petitioner requested the respondent to grant permission for re-shipment of the above consignment. Since, there was no reply from the respondents, the petitioner is before this Court.

3. The respondents have filed a detailed counter. The stand taken by the respondents is that the Chinese Sewing Needles are being smuggled into India and that the same was hidden behind the declared goods. It is stated in the counter that the import certificate issued by the Apparel Export Promotion Council in the name of M/s. Shiny Knitwear, Tirupur had been misused by selling the same by Mr. Pradeep one of the employees of M/s. Shiny Knitwear, Tirupur. Therefore, a show cause notice dated 28-2-2013 has been issued and the matter is pending for adjudication. The goods have been misdeclared in order to evade payment of Anti-dumping duty. The investigation reveals that the petitioner has intentionally shipped the goods along with the declared goods. Since, the adjudication process is pending, the release of goods or re-shipment does not arise. However, the respondents have no objection for the petitioner to participate in the adjudication process as he claims to be the owner of the goods.

4. Heard the learned counsel appearing on either side.

5. It is the case of the petitioner that the alleged goods have been wrongly shipped along with the declared goods. According to the petitioner, since the importer has disowned the goods, they may be permitted to re-ship the goods. It is also the case of the petitioner that the show cause notice has been issued only to the importer and not to them. The petitioner claims to be the owner of the goods.

6. The contention of the petitioner that the staff of the warehouse have wrongly dispatched the goods instead of the declared goods has to be proved only by way of adjudication. Therefore, the relief sought for by the petitioner to release the goods or reshipment cannot be granted at this stage. However, since the importer has disowned the goods, there is no impediment for the authority to permit the petitioner to participate in the adjudication process, as they claims to be the owner of the goods. Further, the petitioner company is a foreign company and the allegation against them is that the goods have been smuggled into India and as the importer has stated that he has never given any such order at all, to safeguard the interest of the revenue, there should be a condition to permit them to seek for either release or return of the goods. Therefore, the petitioner is permitted to participate in the adjudication proceedings. However, since huge amount has been involved in respect of anti-dumping duty to the tune of two crores, the petitioner, in order to show their bona fide, shall produce bank guarantee for a sum of Rs. 50,00,000/- (Rupees Fifty Lakhs only) before the respondents and on such production of bank guarantee, the respondents will

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issue notice to the petitioner for adjudication. The petitioner is also directed to appear before the authority on the date to be fixed by them for adjudication process. Since the goods have been lying in the Port, the respondents are directed to complete the adjudication process within a period of four months from the date of receipt of a copy of this order, after affording reasonable opportunity to the petitioner as well as the importer. The writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

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