

(1994) 01 CAL CK 0036
In the Calcutta High Court
Case No : Matter No. 534 of 1994

Kishan Kumar Daga

APPELLANT

Vs

Collector of Customs

RESPONDENT

Date of Decision : 19-01-1994

Acts Referred:

Citation : (1994) 71 ELT 354

Hon'ble Judges : Ajoy Nath Ray, J

Bench : Single Bench

Advocate : Bhaskar Sen, Dipak Deb, H. Kundalia and Minoti Gomes, for the Appellant; S.K. Mitra and Samir Sengupta, for the Respondent

Judgement

Ajoy Nath Ray, J.—The petitioner imported a consignment of glass beads in September, 1992 and the first assessed duty of Rs. 14,990.32 was paid on 18-9-1992.

2. On that day the goods were examined. Thereafter a show-cause notice was served upon the petitioner on the 18th of March, 1993. The endorsement on the reverse of the bill of entry merely mentions the absence of perforations in the glass beads and thus a doubt was endorsed that those are not glass beads but something else.

3. In the show-cause notice a big claim was made, alleging that the consignment was valued some Rs. 20 lakh more than declared. The show-cause notice was duly replied to. The date of personal hearing was fixed for 30-7-93. The Collector of Customs was too busy to hear the matter on that day. He has not found time to revert to it since, although the petitioner was notified in writing that the next date of hearing would be intimated.

4. In the case reported in Starlite Corporation, Bombay Vs. Union of India, it was held that a mere absence of perforations does not render glass beads into something else.

5. Another decision of the Bombay High Court reported in Metal Distributors Ltd. Vs. Union of India, declared that 15 days time would be a reasonable period for finalising a bill of entry.

6. A decision of our Court given by Ruma Pal, J. reported in RSI India Pvt. Ltd. Vs. Collector of Customs, has ruled about the proper authority to decide upon the question of classification.

7. These three authorities have been relied upon by Mr. Dipak Deb appearing for the petitioner.

8. Mr. Mitra appearing for the respondents stated that since the proceeding was already initiated, the respondents should have a short further time to complete the same. He also submitted, and this, I regret to point out, was not borne out by the records or the show-cause notice, that the release of the glass beads had been held up on the suspicion that the material is not glass but semi-precious stone. There is no warrant for such a submission being made in all seriousness to a Court.

9. In my opinion this is a classical case where the principle that delaying of justice is denial of justice is directly and clearly applicable. Here is a petitioner who has previously imported 25 similar consignments who does everything to get release of his imported consignment and is met with by sheer governmental error and neglect. He has no remedy. His adversaries are the Union of India and are too powerful. No suit will lie against them in these matters. No complaint against them is of any value. The petitioner has at last approached the Writ Court. If the Writ Court refuses them relief then the petitioner might well ask what is the system of justice doing in India.

10. On the above basis and on the basis of submission of learned Counsel mentioned above I have no doubt that the show-cause notice was issued mala fide and there was no basis to brand the consignment of the petitioner as so extremely valuable as is wrongly sought to be made out therein.

11. The above, though said in a final form, is my prima facie view which is to be reviewed by me again at the final hearing of the writ. It is expected that good answers will be forthcoming in the affidavit in opposition.

12. In the present circumstances an interim order is a must. The respondents will release the entire consignment to the petitioner unconditionally within seven days hereof. The petitioner undertakes to pay to Court, at the final hearing of this writ, without the necessity of any recourse being had by the respondents to any fresh proceedings, any excess duty or any damages in lieu of confiscation or any other sums, if any, that might appear to be payable by the petitioner.

13. The respondents will be free to conduct the proceedings initiated by the show-cause notice if they find time to continue the same hereafter. Departmental remedies open to the petitioner might also be resorted to by them notwithstanding the pendency of the writ application. However, such

departmental proceedings and future orders, if any passed, will abide by the result of the writ and no effect will be given to such orders or levies without leave of Court.

14. Since the respondents have appeared no formal rule need be drawn up or served.

15. Affidavit-in-opposition is to be filed by three weeks from date hereof, affidavit-in-reply is to be filed a week thereafter and the matter will appear in the list the working day following.

16. Stay of operation of this order is prayed for but the same is refused.

17. All parties and all others concerned to act on a signed xerox copy of this dictated order on the usual undertaking.

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