(2015) 07 CAL CK 0123

In the Calcutta High Court

Case No : Writ Petition No. 546 of 2015

Krish Micro Minerals LLP	APPELLANT
Vs	
Union of India	RESPONDENT

Date of Decision : 09-07-2015

Acts Referred:

Citation : (2017) 346 ELT 10

Hon'ble Judges : Biswanath Somadder, J.

Bench : Single Bench

Advocate : Shri R.K. Chowdhury, Advocate, for the Petitioner; S/Shri Pradip Kumar Roy and Md. T.M. Siddiqui, Advocates, for the Respondent

Final Decision : Disposed Off

Judgement

Biswanath Somadder, J.—This writ petition has been taken out by an importer challenging an order of adjudication passed on 27th March, 2015 by the Deputy Commissioner of Customs, Group-I, Customs House, Kolkata. By the said order, the subject goods were confiscated under Section 111(m) of the Customs Act, 1962. A penalty of Rs. 25,000/- was imposed under Section 112(a)(ii) of the Customs Act, 1962. An option to redeem the confiscated goods upon payment of a redemption fine of Rs. 1 lac was allowed under Section 125 of the Customs Act, 1962. Finally, the imported goods were directed to be reclassified and duty, fine, penalty was directed to be paid by the importer before clearance of goods.

2. It is noticed from the records that the writ petitioner had filed a Bill of Entry for home consumption dated 23rd December, 2014 for clearance of goods which was declared as "Lime Stone Powder" (not intended for medical use). The quantity of goods was 50 metric tone and the country of origin was declared as Vietnam. The importer claimed classification under Customs Tariff Heading 2521 00 90. The importer claimed exemption from payment of basic customs duty relying on a Notification bearing No. 46/2011-Cus., Sl. No. 192(1). Such exemption is available to specified goods when imported from specified country.

3. Samples were drawn from the goods imported by the writ petitioner and sent for testing at the Chemical Laboratory at the Customs House, Kolkata, after the goods were initially examined on original examination basis. The test report revealed that the samples have the "characteristic of precipitated Calcium Carbonate. It is other than Calcium Carbonate (Natural)". The Joint Director of the Chemical Laboratory at Customs House, Kolkata, vide his report dated 27th February, 2015 made certain further observations which may not be relevant for the purpose of deciding the issue for which the writ petitioner has approached this Court.

4. According to the writ petitioner, a show cause notice was issued on 3rd March, 2015, by the concerned Deputy Commissioner of Customs. In the said show cause notice, the authorities for the first time referred to the test report prepared by the Chemical Laboratory, Customs House, Kolkata dated 21st January, 2015 and supplied the details of its finding together with the further observation made by the Joint Director, Chemical Laboratory, Customs House, Kolkata, vide his report dated 27th February, 2015.

5. It is the specific case of the writ petitioner that in its reply dated 17th March, 2015 to the show cause notice, it had challenged the findings of the test laboratory and requested the concerned authority to send the samples to National Test House or any other reputable test laboratory to verify its statement of declaration of the subject goods as "Lime Stone Powder (not intended for medical use), as contained in its Bill of Entry.

6. While passing the impugned order, the adjudicating authority rejected the petitioner''s request for retest on the specious plea that the importer did not challenge the findings of the test report and after one month during personal hearing they asked for retesting of the sample only to escape penal provision.

7. The facts, however, are otherwise. The result of the test report, which was available to the department, was communicated to the writ petitioner for the first time on 17th February, 2015. However, the details of the test report were made available to the petitioner only in the show cause notice which was issued on 3rd March, 2015. In its reply dated 17th March, 2015, the petitioner challenged the laboratory findings of the test report and requested the concerned authority to send the sample for testing to the National Test House or any other reputable test laboratory.

8. Undoubtedly, the petitioner was entitled to the laboratory details of the test report on 17th February, 2015, but the same was provided only at the time of issuance of the show cause notice dated 3rd March, 2015.

9. The petitioner is entitled to have the sample retested, in such facts and circumstances.

10. As such, this Court directs the concerned respondent authority to send a sample of the goods imported drawn in presence of the writ petitioner for

sending the same to the National Test House or any other reputed test laboratory which the respondent authorities may deem fit and proper for the purpose of retesting. The expenses of such test shall be borne solely by the writ petitioner. Till such time the report is made available, the impugned order of adjudication shall be kept in abeyance.

11. The writ petition is accordingly, disposed of.

12. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.