(2012) 04 AHC CK 0039

In the Allahabad High Court

Case No : Writ Tax No. 487 of 2012

Kundan Rice Mills Ltd. APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 27-04-2012

Acts Referred:
Customs Act, 1962 — Section 110A, 129A
Special Economic Zones Act, 2005 — Section 26

Citation : (2013) 20 GSTR 478

Hon'ble Judges : Prakash Krishna, J;Ashok Bhushan, J

Bench : Division Bench

Advocate : Virender Singh, Bharat Ji Agarwal and Rahul Agarwal, for the Appellant; Ashok Singh for Respondents Nos. 1, 2, 3 and 5 and R.C. Shukla for Respondents Nos. 4, 6 and A.S.G.I., for the Respondent

Judgement

1. Heard Shri Bharat Ji Agarwal, learned senior counsel assisted by Shri Virender Singh and Shri Rahul Agarwal, learned counsel for the petitioner and Shri R.C. Shukla, learned counsel for respondents Nos. 4 and 6 and Shri Ashok Singh, learned counsel for respondents Nos. 1, 2, 3 and 5. Learned counsel for the petitioner submits that the petitioner''s goods which were covered under the bill of entries dated March 15, 2012 were cleared by the customs authorities at the airport. However, they were seized by the intelligence officer for further investigation under panchnama dated March 17/18, 2012 in Special Economic Zone (SEZ) Unit in Noida. The petitioner''s case is that an order of provisional release has been issued on April 18, 2012 which has been filed at page 108 of the paper book directing the provisional release on the following four conditions:

(a) A bond for Rs. 67(sixty seven) crore and a bank guarantee for Rs. 16.75 (sixteen point seven five) crore for safeguarding Government Revenue to be furnished by M/s. Kundan Rice Mills Limited, NSEZ, Noida.

(b) A declaration to be furnished by the unit that they will not dispute/challenge the identity and value of the goods at a later stage.

(c) That export of goods manufactured therefrom be allowed only with the DRI''s approval.

(d) Drawal of representative samples by DRI at the time of release of the consignment.

2. Learned counsel for the petitioner submits that the present petitioner is only aggrieved by condition No. "b" and part of condition No. "a" in so far as it directs for giving bank guarantee for Rs. 16.75 crore. Learned counsel for the petitioner submits that in view of the judgment of the Delhi High Court reported in Navshakti Industries Pvt. Ltd. Vs. Commr. of Cus., ICD, TKD, , the Division Bench has taken a view that no bank guarantee of 25 per cent, u/s 110A of the Customs Act is required for provisional release of goods as provided for in the Customs (Provisional Duty Assessment) Regulations, 1963. Learned counsel for the petitioner submits that the said regulation was again issued, namely, the Customs (Provisional Duty Assessment) Regulations, 2011. He submits that in the Delhi High Court''s judgment similar conditions were imposed for the provisional release and the court has directed for applying the aforesaid regulations and directed for furnishing of bond of 20 per cent, of the differential duty. He has also placed reliance upon the order of the apex court which was passed in a SLP filed against the judgment of the Delhi High Court wherein the apex court has directed the respondents to furnish a bank guarantee of 30 per cent, of the differential duty. Learned counsel for the petitioner submits that condition No. "b" by which the petitioner is foreclosed from challenging/disputing the identity and value of goods at a later stage is onerous and unreasonable.

3. Shri R.C. Shukla, learned counsel for the respondent submits that against the order dated April 18, 2012, the petitioner has alternative remedy by way of filing an appeal u/s 129A of the Customs Act. He further submits that in pursuance of the circular dated January 4, 2011, paragraph 4, the petitioner is liable to give an appropriate security to the entire goods. He has relied on paragraph 4(a) of the circular.

4. Considered the respective submissions of the learned counsel for the parties and perused the record.

5. In so far as the provisional release order is concerned, there is limited scope to challenge the part of conditions Nos. "a" and "b". Submission of the petitioner''s counsel that at best the petitioner could not have asked to give bank guarantee for differential duty and he cannot be precluded from challenging/ disputing the identity and value of goods at a later stage appears to have substance which are duly supported by the aforestated judgments of the Delhi High Court and the order of the apex court which has been brought at page 115 of the paper book. He also placed reliance upon the judgment of the Punjab and Haryana High Court in M/s Amit Enterprises Vs. Union of India and Others, .

6. In so far as the submission of Shri R.C. Shukla that the petitioner has alternative remedy of appeal u/s 129A of the Customs Act, it is submitted that

the order of provisional release is not an adjudication order rather adjudication proceedings are in progress. Relying on the Delhi High Court''s judgment in Navshakti Industries P. Ltd. [2011] 267 ELT 483 (Delhi), it is submitted that the Tribunal in the said case, has dismissed the appeal filed against the provisional release order, is not maintainable.

7. Be that as it may, the said issue needs further consideration. In so far as the submission on the basis of the circular dated January 4, 2011 See [2011] 6 GSTR (st.) 57 is concerned, the subject matter of which is "provisional release of goods entered for exportation" paragraphs 4 and 4(a) on which reliance has been placed by Shri R.C. Shukla, learned counsel for the respondents is reproduced below:

4. Seizure should be resorted to only when the customs officers have a reason to believe that the goods in question are liable to confiscation under the Customs Act, 1962 and thereafter the provisions of section 110A of the Customs Act, 1962 would come into play. However, there may be situations when the goods are to be detained for purpose of tests, etc., to confirm the declaration. In such cases the endeavour should be to quickly undertake the necessary action (test/ enquiry, etc.) and take appropriate legal action thereafter so that the period of detention is kept to the minimum. Thus, the following course of action is prescribed in respect of goods entered for exportation:

(a) In case the export goods are found to be misdeclared in terms of quantity, value and description and are seized for being liable to confiscation under the Customs Act, 1962, the same may be ordered to be released provisionally on execution of a bond of an amount equivalent to the value of goods along with furnishing an appropriate security in order to cover the redemption fine and penalty.

8. The petitioner''s case is that the goods were cleared by the customs authority and it was seized by the Department of Revenue Intelligence (DRI) on March 22, 2012, for further investigation under panchnama dated March 17/18, 2012 in Noida. It is submitted that paragraph 4(a) deals with the export goods and is not applicable with regard to goods which are being imported.

9. After considering the submissions made by the learned counsel for the parties, we are of the view that the petitioner is entitled for release of the goods subject to furnishing of the bank guarantee of 30 per cent, of differential duty and a bond of value of goods as required under condition No. "a".

10. It is clarified that condition No. (b) of the provisional release order shall be kept in abeyance. This order is without prejudice to the contention of the petitioner''s counsel that he is not liable to pay duty of customs in view of section 26 of the Special Economic Zones Act, 2005.

11. Counter-affidavit may be filed within a period of four weeks by the learned counsel for the respondents. Rejoinder affidavit, if any, may be filed within a

period of one week thereafter. Subject to fulfillment of the directions as stated above, the goods will be released within a week from the date of fulfilling of the conditions. Paragraph Nos. "c" and "d " of the provisional release order dated April 18, 2012 shall remain as it is. Respondent No. 6 shall intimate the amount of 30 per cent, of differential duty within a period of three days from the date of production of the certified copy of this order before him.