(2002) 04 MAD CK 0196

In the Madras High Court

Case No : Writ Petition No. 9231 of 2002 and WP. M.P. No. 12512 of 2002

M.M. Telekom APPELLANT

Vs

Commissioner of Customs, Chennai RESPONDENT

Date of Decision : 02-04-2002

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2002) 144 ELT 252

Hon'ble Judges : K. Raviraja Pandian, J

Bench : Single Bench

Advocate : S. Murugappan, for the Appellant; R. Karthikeyan, ACGSC, for the Respondent

Judgement

K. Raviraja Pandian, J.—The above writ petition is filed for issuance of Writ of Mandamus directing the third and fourth respondents, viz., Additional Director General, Directorate General of Revenue Intelligence and Deputy Director, Directorate General of Revenue Intelligence to complete the investigation in respect of import of Compact Florescent Lamps made by the petitioner under cover of Bill of Entry No. 382177, dated 6-3-2002 within a time frame as may be fixed by this Court and not to insist upon deposit of any sum representing any duty before adjudication of the case as per Customs Act.

2. The precise case of the petitioner is that during the course of the business, the petitioner firm ordered for import of 100 cartons consisting of 20,000 pieces of Compact Florescent Lamps from Kiara Gemilang Enterprise. When the consignment arrived at Madras, the petitioner firm filed a Bill of Entry No. 382177 dated 6-3-2002 with the second respondent for the purpose of completing customs formalities and payment of appropriate duty. When the assessment was thus pending with the second respondent, the officers of the third and fourth respondents took away the bill of entry with the related documents for some alleged enquiry on entertaining doubts that the goods though declared as of the Malaysian origin may be from China and if Compact

Florescent Lamps are imported from China, then they are liable for payment of Anti Dumping Duty in terms of Customs Notification 128/2002 dated 21-12-2001. It is the further case of the petitioner that the officers of the third and fourth respondents have issued summons to the petitioner to appear before them for tendering evidence relating to the above enquiry. In pursuant to the same, the petitioner appeared before the officers of the fourth respondent and a statement was recorded from him to the effect that though the goods are declared to be of Malaysian origin, they are of Chinese origin and therefore, the petitioner was prepared to pay the anti dumping duty. Further, the petitioner contended that the statement obtained was not voluntary and by use of force. It is the further case of the petitioner that the petitioner was pressurised by the third and fourth respondents to give the statement and also to undertake to pay the differential duty in spite of the repeated submissions that the goods have originated from Malaysia and the documents to prove the same have already been submitted. With this contention, the petitioner has filed the above writ petition with the prayer as stated above.

3. On notice, the learned Counsel appearing for the respondents has filed a counter controverting the various allegations made in the affidavit filed in support of the writ petition. However, the counter proceeds on the merits of the case.

4. The premises in which the writ petition is filed is that the third and fourth respondents are coercing the petitioner to give the statement to their dictates and also to accept to pay duty as if the goods were originated from China and for that purpose, they are going on issuing summons and obtaining statement after statement without basis and against the established principle of law.

5. On the contrary, the learned Counsel appearing for the respondents has submitted that the petitioner is not at all co-operating to get along with the adjudication proceedings and that he is sending telegram after telegram refuting the various statements given at the time of investigation and that he has also filed an application for anticipatory bail before this Court and ultimately submitted that the Court may direct the petitioner to cooperate with the investigation. Though the counter filed by the respondent was silent about the allegations made in the affidavit, as to coercion and compulsions to give statement and to accept the origin of the goods as China, the Counsel submitted that the third and fourth respondents are not coercing the petitioner to give any statement to their dictates rather than the true statement. He further contended that because of filing of this writ petition and anticipatory petition, the petitioner prolonging the adjudication proceedings.

6. I have heard the arguments of the learned Counsel on either side and I am of the view that it is the duty on the part of the third and fourth respondents, if they have formed an opinion, to prove that the import has been made with fictitious documents so as to avoid anti dumping duty, but at the same time, they will have to follow the procedure to conduct enquiry. They cannot rather compel

the petitioner to give a statement to their dictates or even before the enquiry is over, the third and fourth respondents cannot compel the petitioner to pay the anti dumping duty, as if the petitioner has admitted the guilt. It is open to the third and fourth respondents to conduct the enquiry as expeditious as possible and forward the enquiry report to the first and second respondents so as to enable them to take action under the provisions of Customs Act. It is equally for the petitioner to co-operate with the third and fourth respondents so as to complete the enquiry. It is made clear that the third and fourth respondents should not use force or compel the petitioner to give statement to their dictates or compel the petitioner to pay the anti dumping duty. With this observation, the writ petition is disposed of. No costs. Consequently, WP. M.P. No. 12512 of 2002 is closed.