(2015) 03 KL CK 0328

In the High Court Of Kerala

Case No : Writ Petition (C) Nos. 7105 and 7117 of 2015

Mohammed Fariz and Co. APPELLANT

Vs

Commissioner of Customs RESPONDENT

Date of Decision : 10-03-2015

Acts Referred:

Citation : (2015) 322 ELT 53

Hon'ble Judges : A.K. Jayasankaran Nambiar, J

Bench : Single Bench

Advocate : C.K. Karunakaran and Jophy Pothen Kandankary, for the Appellant; John Varghese and Thomas Mathew Nellimoottil, SCs, Advocates for the Respondent

Judgement

A.K. Jayasankaran Nambiar, J—The petitioners in both these writ petitions are persons, who have imported consignments of betel nuts and presented the same for clearance through customs, by filing the necessary bills of entry. In the bills of entry filed by the petitioners, they claimed the benefit of concessional rate of duty, as applicable to imports from Sri lanka under the Indo-Sri Lanka Free Trade Agreement (ISFTA). In the case of the petitioner in W.P. (C) No. 7105 of 2015, the bill of entry was assessed, by accepting the contentions of the petitioner with regard to concessional rate of duty, and it is understood that the petitioner has also paid the assessed duty to the customs authorities. In the case of the petitioner in W.P. (C) No. 7117 of 2015, the bill of entry though presented, the assessment has not been completed although the goods have been examined by the customs authorities.

2. The facts in both these writ petitions would disclose that, the respondent customs authorities entertained certain doubts with regard to the genuineness of the documents, that accompanied the consignment, which were produced to show that the goods were of Srilankan origin, and were entitled to the benefit of the concessional rate of duty. It is pointed out by the learned standing counsel for the respondents that, there is an enquiry currently under way in connection

with certain other imports of betel nuts, and hence, pending finalization of the said proceedings, the petitioner should also be permitted to clear the imported goods only on furnishing a portion of the differential duty that would be attracted to the imports effected by him, if the benefit of concessional rate of duty is not extended to the said imports.

3. In fact, in both these writ petitions, the petitioners have been served with communications (Ext. P6 in W.P. (C) No. 7117 of 2015 and Ext. P7 in W.P. (C) No. 7105 of 2015), which demand a portion of the differential duty that would be payable by the petitioners if the benefit of concessional rate is not extended to them, as a condition for the clearance of the goods through Customs. In the writ petitions, it is these communications that have been impugned.

4. I have heard Sri C.K. Karunakaran, the learned counsel for the petitioners and Sri John Varghese, the learned Standing counsel for the respondents.

5. On a consideration of the facts and circumstances of the case and also the submissions made across the Bar, I find that in the instant cases, the respondent authorities have not, in the impugned communications, referred to any instances of defaults or irregularities in the imports effected by the petitioners. The sole reason, on the basis of which a provisional assessment is contemplated, is the fact that there are investigations currently under way in respect of certain other imports of betel nuts, at Cochin.

6. In my view, the mere existence of an investigation in respect of other persons cannot be the basis for a detention of goods that have been imported by the petitioners, more so, in a case where the respondent authorities have not been able to identify any irregularity in the imports effected by the petitioners. I do take note, however, of the fact that, the investigation that is currently underway is essentially one that is undertaken to determine whether there is any irregularity in the certificates issued by the Government of Sri Lanka, to support the contention of the importers that they are entitled to the benefit of the concessional rate of duty. In that sense, therefore, there is an interest of the revenue, that needs to be protected while permitting clearance of imported consignments of areca nut. Thus, on an overall consideration of the matter, I am of the view that, in the instant cases, the petitioners can be permitted a provisional clearance of the goods imported by them, subject to their furnishing a Bank Guarantee for 20% of the differential duty, that is demanded by the respondent authorities. Resultantly, these writ petitions are allowed by permitting the petitioners to clear the imported consignments, (i) on paying the admitted duty liability at the concessional rate, in accordance with the Indo Srilankan Free Trade Agreement, (ii) complying with the requirement of furnishing a bond before the customs authorities for payment of the differential duty in the event of the concessional rate being found to not be inapplicable to the imports effected by the petitioners and further, (iii) furnishing a Bank Guarantee for 20% of the differential duty computed by the customs authorities, in favour of the said authorities. It is made clear that, on the petitioners complying with the aforesaid

conditions, which are in modification to the conditions specified in Exts. P6 and P7 communications, the respondent authorities shall forthwith release the imported consignments to the petitioners. I make it clear that, the customs authorities shall endeavor to complete the enquiry, which is currently under way, within an outer time limit of six months from the date of receipt of a copy of this judgment.

