(2012) 01 MAD CK 0078

In the Madras High Court

Case No : Writ Petition No. 30323 of 2011

M/s. Avenue Impex — APPELLANT

Vs

The Commissioner of Customs (Seaport-Import), Customs House No. 60, Rajaji Salai Chennai- 1, The Additional Commissioner of Customs (Group-I, Customs House No. 60, Rajaji Salai Chennai-1 and The Asst. Commissioner of Customs (Group-I), Customs House No. 60, Rajaji Salai Chennai- 1 — RESPONDENT

Date of Decision : 12-01-2012

Acts Referred:
Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 111, 130
Prevention of Food Adulteration Rules, 1955 — Rule 32(7)

Citation : (2012) 285 ELT 345

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

Advocate : B. Satish Sundar, for the Appellant; S. Xavier Felix, SCGSC, for the Respondent

Judgement

M. Jaichandren

1. This writ petition has been filed praying that this Court may be pleased to direct the respondents to implement the final order No. 1166/2011,

dated 27.10.2011, made by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai, by releasing the goods in

question, after waiving the demurrage and the detention charges.

2. It has been stated that the petitioner is a partnership firm engaged in the business of import and trading in cereals, especially, white oats, from

some foreign countries, including Australia and Argentina. The petitioner has been carrying on the said business for a period of nearly 6 years. The petitioner has been allotted the Importer Exporter Code No. 0404008887, by the office of the Zonal JDGFT, Chennai. The petitioner firm has

also been assessed to Income tax and other local taxes.

3. It has been further stated that the petitioner had imported a consignment of Oats (Rolled and Flaked), in 2080 bags of 20 kilograms each. The

goods had been supplied by M/s. Arroyos, Buenos Aires, Argentina. The goods had arrived at Chennai, in the month of June, 2011, under the Bill

of Entry No. 3876640, dated 23.6.2011. An amount of Rs. 4,43,243/- had been paid as the duty, on 29.6.2011. However, the goods had not

been released due to the objections raised by the Port Health Officer attached to the Food Safety and Standards Authority, Chennai, who had not

drawn any samples from the consignment imported by the petitioner due to the fact that the date of manufacture and the name and address of the

manufacturer had not been found on the packs. Therefore, adjudication proceedings had been initiated and the second respondent had confiscated

the goods, u/s 111(d) of the Customs Act, 1962, and had allowed redemption for the purpose of re-export on payment of a fine of Rs. 2,00,000/-

and the penalty of Rs. 1,00,000/-.

4. It had also been stated that in the event of the petitioner not causing re-export of the goods in question, within a period of 30 days, the said

goods would be destroyed at the cost of the petitioner. Challenging the said order, the petitioner had filed an appeal before the Commissioner of

Customs (Appeals), who had passed an order, dated 26.8.2011, confirming the order of the lower authority. However, the fine amount had been

reduced to Rs. 1,00,000/- and the penalty to be paid by the petitioner had been reduced to Rs. 50,000/-. However, the goods in question had not

been allowed for home clearance.

5. Challenging the said order, the petitioner had filed a further appeal before the Customs, Excise and Service Tax Appellate Tribunal, South Zonal

Bench, Chennai. The said Tribunal had taken up the appeal for disposal and had passed an order, dated 27.10.2011, in final order No.

1166/2011.

6. The operative portion of the said order is as follows:

I find that the appellants have imported the consignment of Oats in 20 kgs packs and the same bears the necessary details regarding the supplier''s name, brand, address and the date of expiry as April, 2012, before the consignment has been shipped from Argentina. The applicants are also

undertaking to provide any other details required to comply with the local laws at the time of re-packing and re-labeling the impugned goods in the

customs bonded area before customs clearance. They are also undertaking to ensure that the Port Health Authorities are called upon to test the

consignment before customs clearance is sought. As such, the prayer made by the appellants is very reasonable and there is no reason why the

same should not be allowed. Accordingly, the impugned order is set aside and the customs authorities are directed to allow the appellants to re-

pack and relable the impugned goods in a customs bonded premises, subject to mutual convenience. Thereafter, it would be open to the Port

Health Authorities to test and certify the impugned goods. A fresh order may be passed by the original authority after the certification is done by

the Port Health Authorities. The appeal is allowed in the above terms.

7. Pursuant to the said order passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai, the petitioner had

been making several representations to the authorities concerned, for the release of the goods in question. However, no order has been passed for

the release of the consignment, as per the order passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai,

dated 27.6.2011. In such circumstances, the petitioner has preferred the present writ petition before this Court, under Article 226 of the

Constitution of India.

8. The learned counsel appearing for the petitioner had submitted that Oats (Rolled and Flaked) have a limited shelf life. According to the supplier,

the goods are to be used as ""Best Before"" April, 2012. The goods had arrived in bulk packs of 20 kilograms each and they had the suppliers

name, brand and address, in Spanish. Further, if the goods are in bulk packs and are further re-processed and put into smaller retails packs,

labeling requirements are not mandatory. Therefore, the contentions of the respondents that the goods have been misbranded is not sustainable, in

view of the proviso to Rule 32(7) of the Prevention of Food Adulteration Rules, 1955.

9. It had been further stated that the petitioner had undertaken to provide all the

necessary details to comply with the local laws, at the time of re-

packing and relabeling of the goods in question, in the Customs Bonded Area and that should be sufficient for the respondents to act in terms of

the order of the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai, by allowing re-packing, and re-labeling of the

goods in question and for the clearance of the goods by the Port Health Authorities. In fact, the respondents had not even allowed the petitioner to

fumigate the goods in question, under the control and supervision of the authorities concerned.

10. It had been further stated that no appeal had been preferred by the respondents, u/s 130 of the Customs Act, 1962, on a substantial question

of law, to be established at the stage of the filing of the appeal. As long as no appeal has been filed against the order of the Customs, Excise and

Service Tax Appellate Tribunal, South Zonal Bench, Chennai, and when no interim order had been granted against the order of the Tribunal, dated

27.10.2011, the respondents have no authority or power to detain the goods, contrary to the said order.

11. The learned counsel had further stated that if the goods in question are not released by the authorities concerned, immediately, the shelf life of

the said goods would come to an end. As such, severe financial loss and serious hardship would be caused to the petitioner. Therefore, the

respondents may be directed to release the goods in question, as per the order of the Customs, Excise and Service Tax Appellate Tribunal, South

Zonal Bench, Chennai, dated 27.10.2011.

12. No counter affidavit has been filed on behalf of the respondents.

13. The learned Senior central Government Standing Counsel, appearing for the respondents, had submitted, on instructions, that an appeal is

being preferred against the order of the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai, dated 27.10.2011,

and therefore, the releasing of the goods in question would not arise, at this stage. He had further submitted that the goods in question may not be

fit for human consumption and therefore, the releasing of the such goods would result in serious health hazards.

14. In reply, the learned counsel appearing for the petitioner had submitted that the goods in question, imported by the petitioner, should be

released by the respondents by following the order of the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai,

dated 27.10.2011. No further conditions can be imposed by the authorities concerned, over and above those which had been prescribed by the

Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai, in its order, dated 27.10.2011. However, the petitioner

undertakes to abide by all the conditions prescribed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai, in

its order, dated 27.10.2011, and the further conditions, if any, that may be imposed by the respondents. He had further submitted that the goods

may be released, by the respondents, only if it is found to be fit for human consumption.

15. In view of the contentions raised on behalf of the parties concerned and on a perusal of the records available, this Court finds it appropriate to

direct the respondents to release the goods in question by following the conditions prescribed in the order of the Customs, Excise and Service Tax

Appellate Tribunal, South Zonal Bench, Chennai, dated 27.10.2011, as the respondents have not been in a position to show that the order of the

Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai, dated 27.10.2011, had already been challenged, by way of an

appeal. It is found that the order of the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai, dated 27.10.2011,

makes it clear that the goods in question shall be released only on the petitioner undertaking to provide all the necessary details required to comply

with the local laws, at the time of the re-packing and the re-labeling of the said goods, in the customs bonded area, before the necessary customs

clearance is given.

16. It had also been stated that the goods in question would be subjected to the necessary tests, by the Port Health Authorities, before the customs

clearance is sought for by the petitioner. The Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai, had passed the

order, by setting aside the impugned order, which had been challenged before it, and by directing the respondents to allow the petitioner to re-

pack and re-label the goods in question, in a customs bonded area, subject to mutual convenience.

17. It had also been stated that it would be open to the Port Health Authorities concerned to test and to certify the detained goods. It had also

been made clear that a fresh order may be passed by the original authority after the certification was done by the Port Health Authorities.

Therefore, it is clear that the petitioner would have to comply with a number of conditions before the goods in question are released. Sufficient

safeguards had been incorporated in the order of the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai, to make

sure that the goods in question are fit for human consumption, as they would be released only after appropriate inspection by the Port Health

Authorities.

18. Further, the petitioner shall abide by any further condition to be imposed by the respondents before the goods are released. The respondents

shall not release the goods, unless they are found to be fit for human consumption. As such, with the above conditions, the respondents are

directed to implement the order of the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai, dated 27.10.2011,

within a period of two weeks from the date of receipt of a copy of this order.

The writ petition is disposed of accordingly. No costs. Connected M.P.No. 1 of 2011 is closed.