(2012) 11 MAD CK 0240

In the Madras High Court

Case No : Writ Petition No. 31165 of 2012 and M.P. No. 1 of 2012

M/s. Spectroteks APPELLANT

Vs

The Commissioner of Customs, (Seaports-Import), Customs House, No. 60, Rajaji Salai, Chennai 600001, The Additional Commissioner of Customs (Group 5), Customs House, No. 60, Rajaji Salai, Chennai 600001 and The Director General of Foreign Trade and Ex-Officio, Additional Secretary to the Government of India, Ministry of Commerce and Industry, Department of Commerce, New Delhi RESPONDENT

Date of Decision : 23-11-2012

Acts Referred:

Citation : (2012) 11 MAD CK 0240

Hon'ble Judges : R. Sudhakar, J

Bench : Single Bench

Advocate : A.K. Jayaraj, for the Appellant; P. Mahadevan, for R1 and R2, M/s. T. Chandrasekar and D. Vijayakumar, for R3, for the Respondent

Judgement

R. Sudhakar

1. This Writ Petition is filed praying to issue a Writ of Mandamus, directing the respondents 1 and 2 to release the goods, viz., 116 Units of used Digital Multifunction Print and Copying Machines imported vide Bill of Entry No. 8351514, dated 30.10.2012, under Free as Second Hand Capital goods in terms of Para 2.17 of Foreign Trade Policy read with para 2.33 of Hand Book of Procedures without imposing any restriction including Notification of DGFT dated 5.6.2012 and on payment of applicable duties of Customs on the enhanced value by the Chartered Engineer. Mr. P. Mahadevan, learned counsel takes notice for the respondents 1 and 2 and M/s. T. Chandrasekar and D. Vijayakumar, learned counsel takes notice for third respondent. By consent, the writ petition is taken up for final disposal.

2. The issue is covered by a common order dated 9.11.2012 rendered in W.P.

Nos. 28285 of 2012 etc. batch. The relevant portion of the order dated 9.11.2012 reads as follows:-

2. The petitioner in each one of these cases have imported secondhand used Digital Multifunction Printing and Copying Machines as well as secondhand used Photocopier Machines. They filed bills of entry for assessment and clearance of the goods stating that they are freely importable. It appears that the good were examined by the Chartered Engineer and a report has been filed. The Customs Department is keeping the matter pending for one or other reason and thereby, the petitioners were forced to come to this Court for the above stated relief of assessment and to permit the clearance of the goods. An interim prayer was made for provisional release. It appears that the miscellaneous petitions filed for provisional release came to be ordered by my predecessor granting provisional release of the goods on certain conditions. The Director General of DGFT, aggrieved thereby, filed an appeal challenging the order of provisional release of the goods before the First Bench of this Court. On appeal, the order of provisional release was set aside and was remanded to this Court for final disposal.

3. After hearing the learned counsel for the petitioners as well as the learned counsel for the respondents, this Court is of the view that the issue as to whether the circular issued by the Director General of Foreign Trade viz., Notification No. 1(RE-2012) 2009-2014, dated 05.06.2012 will be applicable to the goods in question and assuming that notification is applicable and whether the goods can be refused clearance is a question to be decided by the Assessing Authority namely the proper Officer of the Customs Department at the time of assessment of the goods under the provisions of the Customs Act.

4. In the present case, no order has been passed by the Customs Department on the bill of entry having regard to the Notification issued by the DGFT. As to whether the goods are restricted goods or freely importable and whether it should be released on certain terms on adjudication is a matter to be decided by the Competent Authority in accordance with the provisions of the Customs Act taking note of the Foreign Trade Policy as applicable.

5. Assuming that the goods are restricted and liable for confiscation, the petitioner plea is that the authority should adjudicate the matter and release of the goods, since it falls under the restricted category. There cannot be a blank embargo on release of the goods which are suffering huge demurrage charges. It does not benefit either the petitioner or the Customs Department.

6. In this case, it is not for the Court to decide as to the applicability and effect of the DGFT Notification at this stage. The nature of order that is to be passed by the Assessing Authority cannot be prescribed as the provisions of the Customs Act enables the Authority to decide the importability of the goods including restriction if any and adjudicate for the purpose of confiscation and release on payment of fine and penalty as is warranted. To this course of action, the

Customs Department is agreeable and Mr. Ravi Anantha Padmanabhan on instruction states that the Customs Department will assess and adjudicate the matter, if required, in terms of the provisions of the Customs Act. The said statement is recorded.

7. In such view of the matter, the competent authority of the Customs Department viz., the Assessing Authority is directed to assess the goods in question in terms of the Customs Act read with the relevant Foreign Trade Policy as may be applicable and if it is found that the issue requires adjudication, the same shall be adjudicated taking into consideration the practice that is followed in similar cases without discrimination. Such exercise to be done preferably within a period of three weeks from the date of receipt of a copy of this order. The petitioners in each case represented by their counsel undertake that they will co-operate with the Customs Department for early disposal of the matter.

8. By consent as above, all the writ petitions stand disposed of in the above terms. The connected miscellaneous petitions are closed. No costs.

The above decision will squarely applies to this case also.

In view of the above decision, this writ petition is disposed of in terms of the direction issued in the above decision. The connected miscellaneous petition is closed. No costs.

