

(2013) 04 MAD CK 0129

In the Madras High Court

Case No : Writ Petition No. 3655 of 2013

M/s. Veetrag Enterprises

APPELLANT

Vs

The Commissioner of Customs (Imports), The Additional
Commissioner of Customs and The Deputy Commissioner of
Customs

RESPONDENT

Date of Decision : 02-04-2013

Acts Referred:

Constitution of India, 1950 — Article 19, 21
Customs Act, 1962 — Section 110, 110A, 17, 18

Citation : (2013) 297 ELT 30 : (2013) 5 MLJ 61

Hon'ble Judges : V. Dhanapalan, J

Bench : Single Bench

**Advocate : A.K. Jayaraj, for the Appellant; Vikram Ramakrishnan, Central Govt.
Standing Counsel, for the Respondent**

Judgement

V. Dhanapalan, J.—Heard Mr. A.K. Jayaraj, learned counsel for the petitioner and Mr. Vikram Ramakrishnan, learned Central

Government Standing Counsel appearing for the respondents. The petitioner has filed this writ petition for a direction to the respondents to release

the goods viz., 93 Pallets i.e. 26.00208 M/Tons of Tissue Paper, imported vide Bill of Entry No. 8998733, dated 11.01.2013, on the value

declared by the petitioner at USD 405 per M/Ton and USD 10530.84 (CIF), Chennai totally.

2. The case of the petitioner, in a nut-shell, is as under:

(a) The petitioner-Company has imported 26.00208 M/Tons of Tissue Paper from China at USD 10530.84 (CIF), Chennai totally. The above

goods were shipped from M/s. Fujian Tengsheng Trading Co. Ltd., China, vide Invoice No. TS2012165, dated 07.12.2012, and filed Bill of

Entry No. 8998733, dated 11.01.2013, and claimed clearance of the goods for Home Consumption. On the arrival of the subject goods at

Chennai Port, the petitioner had filed Bill of Entry for Home Consumption and sought for clearance of the goods. They had declared the value of

the goods at USD 10530.84 (CIF), Chennai, totally. Thereafter, the petitioner had requested the respondents to release the above goods, but they

have neglected to do so.

(b) The petitioner has furnished all the documents to establish that the value shown in the invoice is the price actually paid to the seller for the sale

and export of the subject goods and requested the respondents to release the goods immediately, but no orders were passed. The petitioner had

imported the goods viz., 93 Pallets i.e. 26.00208 M/Tons of Tissue Paper from China at USD 10530.84 (CIF), Chennai totally and USD 405 per

M/Ton and the said price is the true and correct price even in the International Market and the petitioner and foreign supplier do not have any

interest whatsoever in the business of each other.

(c) Identical goods were released for many other importers in the same Custom House for more or less of the same value and furthermore, the

goods imported by the petitioner are un-branded goods and are cheaper in quality and imported from China. The imported goods are freely

importable as per Import and Export Policy and are not restricted or prohibited goods.

(d) The petitioner has borrowed substantial amount from third parties for the import of the subject goods and if the goods imported continue to

remain in the hands of the respondent, the petitioner's business will be in jeopardy. The respondents have failed to exercise the statutory functions

vested in them and not ordered the release of the goods, thereby they have violated the fundamental rights of the petitioner guaranteed under

Articles 19 and 21 of the Constitution of India. Aggrieved by the inaction on the part of the respondents in not ordering the release of the goods,

and also on the unreasonable attitude of the respondents, the petitioner has filed this writ petition for the above relief.

3. The respondents have filed counter affidavit, wherein, they have stated as follows:

3.1. The petitioner, M/s.Veetrag Enterprises had filed a Bill of Entry No.

8998733/11.03.2013 for the import of goods declared as ""Tissue paper for packing & wrapping 480 sheets/ream 17 GSM"" from China (classifying the same under CTH 48025450). The declared quantity is 26.00208 mts, at a unit price of USD 405/mts (CIF). The assessable value is Rs. 5,83,393/- and the applicable duty @ 10%+6%+3%+4% is Rs. 1,27,934/-. The said Bill of Entry was selected by the system for assessment and examination and while assessing, the concerned Assessing Officer had a doubt over the classification claimed by the petitioner and even the description due to the fact that ""tissue paper"" gets covered under different tariff headings. In this regard, a query was raised to the petitioner in the system on 01.01.2013 itself calling upon the petitioner to furnish the requisite import documents and also to justify the CTH claimed by them. But, the petitioner has neither furnished the import documents and clarification regarding the CTH nor replied to the query of the respondents. Till date, they have also not requested for any provisional assessment/release of the goods or even for a Section 49 bonding.

3.2. As regards the value, the contemporary import value of Tissue paper of packing grade of assorted GSM was noticed in the range of USD 600-620/MT as against the declared value of USD 405/MT. Instead of cooperating with the assessment process and helping the Department arrive at the correct classification and valuation, the petitioner has rushed to this Court by way of the present Writ Petition moving for release of the impugned goods without fulfilling their basic obligations. The Bill of Entry cannot be assessed and the respondents cannot process the Duty to be paid in the system until the petitioner responds to the query raised, since the Bill remains regimented in the "importer"s queue".

3.3. The averment of the petitioner in paragraph 6 of the affidavit, wherein, he himself admits that the impugned goods are unbranded in nature and are cheaper in quality and imported from China, strengthens the stand of the respondents that both valuation and classification must be correctly ascertained before goods can be released. The "burden of proof" is on the importer to prove that the "transaction value" is genuine. Instead of discharging the same, the petitioner has approached this court, falsely alleging that the respondents have caused undue delay in assessment and clearance of goods.

4. On the above background of pleadings, I have heard the learned counsel appearing for the parties and perused the material documents available on record.

5. On an analysis of the entire facts, it is seen that the petitioner-Company imported 26.00208 M/Tons of Tissue Paper from China at USD

10530.84 (CIF), Chennai totally, which were shipped from M/s.Fujian Tengsheng Trading Co. Ltd., China. On the arrival of the subject goods at

Chennai Port, the petitioner filed Bill of Entry for Home Consumption and sought for clearance of the goods. The value of the goods was declared

at USD 10530.84 (CIF), Chennai, totally. The petitioner has furnished all the documents to establish that the value shown in the invoice is the price

actually paid to the seller for the sale and export of the subject goods and requested the respondents to release the goods immediately, but no

orders were passed. The petitioner claims that identical goods were released for many other importers in the same Custom House for more or less

of the same value and furthermore, the goods imported by them are un-branded goods, cheaper in quality and imported from China and they are

not restricted or prohibited goods. It is the grievance of the petitioner that they have borrowed substantial amount from third parties for the import

of the subject goods and if the goods imported continue to remain in the hands of the respondent, the petitioner's business will be in jeopardy.

6. It is the case of the respondents that the goods in question were undervalued and seized under the Customs Act and further investigation in the

subject matter is in progress and hence, release of goods as sought for by the petitioner could not be entertained.

7. While examining the claim of the petitioner for release of the goods in question, the circumstances under which the import was done, have to be

looked into and thereafter, the value so declared by the petitioner is a matter to be taken into account. The petitioner declared the value of the

goods as USD 10,530.84 (CIF) Chennai, totally, which according to the respondents is low. Further investigation is yet to be completed and

adjudication proceedings are also to be made thereafter. Such being the situation, the condition for provisional release to be made, has to be

examined.

8. In this regard, learned counsel for the petitioner relied on various decisions of

this Court and also a decision of the Supreme Court in the case of the Commissioner of Customs V. Navshakti Industries Private limited, (2011 (269) ELT A146 (SC)), wherein the Apex Court has held as follows:-

.... having considered the facts and circumstances of the case and also taking notice of the fact that the goods in question are newsprint which is perishable in nature, we issue a direction that the goods of the respondents shall be cleared by the appellants herein on the respondents' furnishing a bank guarantee of 30% of the differential duty to the satisfaction of the Commissioner of Customs. The goods shall be released in terms of this order immediately on furnishing of the aforesaid bank guarantee and satisfaction of the concerned Commissioner of Customs. We also direct the Commissioner of Customs to hear the adjudication proceedings pending before him as early as possible, preferably within a period of three months, from the date of receipt of a copy of this order.

In terms of the aforesaid order, the appeal stands disposed of. We, however, make it clear that while passing the aforesaid order, we have not expressed any opinion or views on the merits of the dispute which shall be independently considered by the competent authority.

8a. In similar circumstances, the First Bench of this Court in a recent ruling in W.A. No. 582 of 2011, dated 01.04.2011, took a view, while modifying the order of the learned single Judge, by directing the respondent therein to deposit 50% duty of the value of the goods instead of depositing the entire customs duty and the redemption fine, and on such deposit being made, the goods shall be released forthwith in favour of the respondent therein. Learned counsel for the petitioner would submit that the case of the petitioner herein also stands on the same footing and their claim for provisional release of goods shall be considered with a reasonable condition.

9. Refuting the above submissions, learned Standing Counsel for the respondents contended that in the case of Commissioner of Customs V.

Navshakti Industries Private limited, (2011 (269) ELT A146 (SC)), relied upon by the petitioner, the condition imposed for provisional release of

the goods is only by furnishing a bank guarantee and in order to safeguard the interest of the Department, the petitioner herein may be directed to

pay 30% of the differential duty, furnish bank guarantee for 20% of the differential duty and for the remaining 50%, the petitioner-Company shall

furnish a bond. He would further contend that in case, if the Department succeeds in the adjudication proceedings, it is not possible for the

Department to recover any "amount" if the goods are released.

10. It is seen that in Notification No. 81/2011-Customs (N.T.), dated 25.11.2011, issued by the Government of India, Ministry of Finance,

Department of Revenue (Central Board of Excise and Customs), the Customs (Provisional Duty Assessment) Regulations, 2011 were brought into

force, which inter-alia provided the following:-

1. Short title and commencement:

(1) These regulations may be called the Customs (Provisional Duty Assessment) Regulations, 2011.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. Conditions for allowing provisional assessment.-

(1) Where-

(a) an importer or an exporter, as the case may be, is unable to make self-assessment under sub-section (1) of Section 17 of the Customs Act,

1962 (52 of 1962) and makes a request in writing to the proper officer for assessment; or

(b) the proper officer on account of any of the grounds specified in sub-section (1) of Section 18 of the said Act, is not able to verify the self-

assessment or make re-assessment of the duty on the imported goods or the export goods, as the case may be, he shall make an estimate of the

duty to be levied (hereinafter referred to as the provisional duty).

11. Section 110-A of the Customs Act, 1962 provides for provisional release of goods, documents and things seized pending adjudication. Any

goods, documents or things seized u/s 110 of the Act, may, pending the order of the adjudicating officer, be released to the owner on taking a

bond from him in the proper form with such security and conditions as the Commissioner of Customs may require.

12. The reason for non-release of goods is that the petitioner has under-valued the goods in question. The respondents, on investigation, found that

the differential duty has to be paid even for the provisional release of goods. The investigation has to be completed and thereafter, adjudication has

to be done for assessment of the value of the goods in question. In the light of the above stated legal position and as the goods in question are not

prohibitory items under the provisions of the Customs Act, considering the facts and circumstances of the case and having regard to the foregoing

reasons and discussions, provisional release of the goods in question, is ordered subject to the following conditions:-

(i) The petitioner shall deposit with the customs authorities the duty payable on the value declared by them.

(ii) The petitioner shall deposit with the customs authorities, 50% of the differential duty i.e., the difference between the value declared by them and

the value provisionally assessed by the Department, in the light of the decision of the First Bench of this Court in W.A. No. 582 of 2011, dated

01.04.2011 and for the balance 50% of the differential duty, the petitioner shall furnish personal bond to the satisfaction of the customs authorities.

(iii) The investigation is yet to be completed and adjudication is also to be done. Therefore, it is needless to state that this order shall not stand in

the way of the respondents to proceed with the investigation and also the adjudication process. In such an event, the petitioner shall co-operate

with the respondents for conclusion of the investigation as well as the adjudication proceedings.

With the above observations and directions, the Writ Petition is disposed of. No costs. Consequently, connected M.P. No. 1 of 2013 is closed.