(2015) 09 MAD CK 0121

In the Madras High Court

Case No : W.P. No. 18283 of 2004

Narayan Jain APPELLANT

Vs

Addl. Dir. General, Directorate of Revenue Intelligence RESPONDENT

Date of Decision : 02-09-2015

Acts Referred:
Customs Act, 1962 — Section 124

Citation : (2015) 324 ELT 81

Hon'ble Judges : R. Mahadevan, J.

Bench : Single Bench

Advocate : V. Nithyanandam for Star Associates, for the Appellant; V. Candrasekar, for the Respondent

Judgement

R. Mahadevan, J.—Seeking to issue a writ of mandamus directing the respondents jointly or severally to pay the balance amount of Rs. 4,36,676/- out of Rs. 11,65,000/- being the value of the goods, which were seized from the custody of the son of the petitioner and auctioned by the respondents, together with interest, he has before this court with this writ petition. The case of the petitioner in brief is that on 12-4-2002, the son of the petitioner was to undertake a trip to Delhi by Indian Airlines Flight (IC 44). While so, on the basis of a reliable information that some goods were being smuggled, the revenue officials intensified the search operations. During such surveillance, the son of the petitioner was intercepted in the airport at Chennai and on a thorough search, the officials of the revenue intelligence noticed that the son of the petitioner was in possession of 215 Nos. of Cellular Phones of assorted brands and models with accessories. According to the petitioner, those articles were purchased by his son from the customs house on the belief that they were duty paid articles. But, not being satisfied with the explanations offered by his son, the authorities seized the entire goods alleging that they are smuggled goods.

2. Thereafter, a show cause notice came to be issued on 28-8-2015 under Section 124 of the Customs Act by the customs authority calling upon the

petitioner as to why the goods could not be confiscated and penalty should not be imposed on him and on his son. The petitioner sent a suitable reply refuting the allegations. The goods so seized were valued at Rs. 11,66,000/- by the authorities. After holding an enquiry in the matter, by order dated 19-4-2003, the Additional Commissioner of Customs (Airport), Chennai, held that the goods were not liable for confiscation and the petitioner and his son were not liable to pay any penalty.

3. The petitioner further states that thereafter when he approached the authority concerned by way of an application for the release of the goods so seized, he was informed that the goods were already disposed of by the disposal unit, customs house at Chennai. Subsequently, by letter dated 18-2-2004, he was advised to claim the value of the goods. Thereafter, by his letter dated 19-3-2004, when he claimed the value of the goods, he was paid only a sum of Rs. 7,29,327/- alleging that the goods were disposed of only for Rs. 7,29,327/-. However, according to the petitioner, he received the said amount without prejudice to his rights. Thereafter, he sent two notices through his counsel on 7-4-2004 and 21-4-2004 respectively claiming refund of balance amount, but there was no response.

4. The grievance of the petitioner is that though the order was passed as early as on 19-4-2003 by the Additional Commissioner of Customs (Airport) in his favour, he was able to get a portion of the value of goods alone and all these years he could not succeed in his efforts to get the difference in the goods value. Thus, he has no other option except to approach this court by way of the present writ petition.

5. Heard both sides and also perused the records carefully.

6. The short point involved in this matter is that after seizure of goods, necessary adjudicatory proceedings were conducted and finally, the authority decided the matter in favour of the petitioner to the effect that the petitioner and his son were neither liable to be prosecuted nor the goods were liable to be confiscated. Thereafter, the petitioner was directed to approach the authority concerned for the early release of the goods so seized. The petitioner, accordingly, submitted his representation. But, to his shock and surprise, he was informed by letter dated 12-12-2003 that the goods seized were already disposed of by the disposal Unit, Customs House, Chennai and he was directed to claim the value of the goods. Accordingly, he made a claim and he was paid only a sum of Rs. 7,29,327/- out of Rs. 11,66,000/-. Therefore, he submitted another representation dated 19-3-2004 for refund difference in value of the goods followed by two reminders 7-4-2004 and 21-4-2004 respectively through his lawyer.

7. The learned counsel for the petitioner would submit that without any notice or intimation, the goods of the petitioner were sold out and when the petitioner approached the authorities for refund, a portion of the amount alone was paid

and the petitioner is entitled to get refunded the difference in the goods value.

8. The learned standing counsel appearing for the respondents 2 and 3 would, on the other hand, submit that the goods were sold only as per the value prevalent at the relevant point of time which is stoutly opposed to by the learned counsel for the petitioner. However, considering the facts and circumstances of the case and in order to give quietus to the issue, without going into the merits of the claim made by the petitioner, the respondents are directed to consider the representation of the petitioner dated 19-3-2004 followed by reminders dated 7-4-2004 and 21-4-2004 issued through his lawyer and pass appropriate orders on the same on merits and in accordance with law within a period four weeks from the date of receipt of a copy of this order. No costs.