(2013) 12 AHC CK 0205

In the Allahabad High Court

Case No : Writ Tax No. 970 of 2013

Nishant Enterprises APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 02-12-2013

Acts Referred:

Citation : (2014) 45 GST 606 : (2014) 24 GSTR 498

Hon'ble Judges : Surya Prakash Kesarwani, J;Sunil Ambwani, J

Bench : Division Bench

Judgement

1. We have heard Shri N.C. Gupta, learned counsel for the petitioner. Shri Amit Mahajan appears for the respondents. The petitioner is a proprietorship firm. It imported electronic goods (mobile accessories/parts) from foreign suppliers in China in November, 2010. A bill of entry dated November 3, 2010 along with other documents were filed with the Customs Authorities, ICD, Loni, Ghaziabad. Certain discrepancies were found in the quantity and contents of the goods after the first checking. The customs authorities retained the goods under the seizure memo dated January 28, 2011.

2. The petitioner applied for the provisional release of goods and filed Writ Petition No. 19 of 2011, in which an order was passed on January 19, 2011 to decide the petitioner''s representation. On February 9, 2011 a conditional release order was passed requiring the petitioner to submit the bank guarantee, until the final adjudication. The conditions of the order are quoted as below:

In this regard it is submitted that the goods in the question can be released provisionally on execution of bond for face value of the goods (Rs. 70,64,487) and furnishing of a security amounting to 25 per cent of the value of the goods and also subject to fulfillment of the following conditions:

1. The importer should not dispute the identity of the goods as detailed in the seizure memo dated January 28, 2011, i.e., the presence of brand ''kinetic gold'' and the printing of M/s. Kinetic Mobile Accessories (P.) Ltd., India and made in

India on the packing of the mobile accessories imported by them;

2. On payment of total duty amounting to Rs. 18,96,723 including the differential duty liability of Rs. 11,88,600 as detailed in the seizure memo dated January 28, 2011;

3. Submission of adequate bank guarantee to safeguard fine and penalty arising in the adjudication proceeding. The bank guarantee should remain valid up to finalisation of the case and should have a self renewal clause;

4. Submission of bond for the amount of value of the seized goods as indicated above. The bond should remain valid up to finalisation of the case and should have a self renewal clause.

Yours faithfully, Assistant Commissioner of Customs, ICD Loni, Ghaziabad.

3. The petitioner submitted the bank guarantee on which goods were released to him. A show-cause notice was thereafter issued on October 1, 2012 proposing confiscation of seized goods; imposition of differential duties and penalties.

4. This writ petition has been filed praying for release of the bank guarantee on the ground, that since the show-cause notice was issued after a period of six months, the goods were liable to be unconditionally released. For the same reason and logic the bank guarantee furnished by the petitioner should also be released. The bank guarantee was furnished as a condition for release, which is no longer applicable inasmuch as the show-cause notice was issued after statutory period of six months rendering the entire action arbitrary and illegal.

5. The petitioner has applied for release of the bank guarantee on May 17, 2013. He has relied upon the judgments in Jatin Ahuja Vs. Union of India and Others, , Writ Petition (C) No. 2952 of 2012, Vipin Chanana Vs. Directorate of Revenue Intelligence, , Writ Petition (C) No. 7738 of 2012 and Parvinder Singh Khurana v. Commissioner of Customs, Writ Petition (C) Nos. 7965 and 7966 of 2012 to support his submission.

6. The learned counsel appearing for the respondents submits that the petitioner has not acquired a cause of action for release of the bank guarantee, which was deposited on October 1, 2012. The writ petition has been filed with a delay of more than one year. He submits that though the provisions of unconditional release under sub-section (2) of section 110 is applicable where the goods have been provisionally released, either u/s 110(1A) or u/s 110A, the question of release of security including bank guarantee does not arise, until the adjudication is concluded. He further submits that since in the present case the power of extended period of limitation has been invoked by the competent authority, and that the show-cause notice as well as invocation of such power has not been challenged, there is no question of release of the bank guarantee, until the pending adjudication is concluded.

7. We have examined the facts of the case, and are of the view that where the

goods are provisionally released subject to security, awaiting adjudication the security including the bank guarantee, the security cannot be released, until the adjudication is concluded. Sub-section (2) of section 110 is not applicable where the provisional release has been made conditionally either in exercise of section 110(1A) or section 110A of the Customs Act.

8. In the judgment of the Delhi High Court in Jatin Ahuja v. Union of India [2013] 22 GSTR 445 (Delhi) the seized Maserati Quattroporte 4.2 Automatic car was not conditionally released. Since the notice was issued after a period of six months, the court relying upon the provisions of section 110(2), directed the release of the car. The facts of this case are different and distinguishable. In this case the provisional release was allowed subject to condition of furnishing security, until the adjudication is concluded.

9. In this case the bank guarantee was submitted on a specific condition to safeguard fine and penalty arising in adjudication proceeding. Condition 3 clearly provided that the bank guarantee shall remain valid up to finalisation of the case and should have a self renewal clause. In the circumstances when the notice issued within an extended period of limitation, is not under challenge, and the adjudication is pending, there is no question of release of the bank guarantee at this stage. The writ petition is dismissed.