(2012) 08 P&H CK 0035

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 13136 of 2012 (O and M)

Om Udyog	APPELLANT
Vs	
Joint Commissioner of Customs	RESPONDENT

Date of Decision : 28-08-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Customs Act, 1962 — Section 128

Citation : (2013) 287 ELT 48

Hon'ble Judges : Gurmeet Singh Sandhawalia, J;Ajay Kumar Mittal, J

Bench : Division Bench

Advocate : Jagmohan Bansal, for the Appellant; Kamal Sehgal, for the Respondent

Final Decision : Allowed

Judgement

G.S. Sandhawalia, J.—The petitioner has filed the present writ petition under Article 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari quashing the order dated 5-7-2012 (Annexure P-7) whereby while directing the release of goods of the petitioner two conditions had been imposed. Firstly that the bank guarantee to the tune of 25% of the value of the goods i.e. Rs. 1,19,32,754/- with auto renewal clause and secondly that the party would give undertaking to the effect that the description of the goods/their quality/age/ or other technical specifications/characteristics/identity, etc., including analyses/ test reports as mentioned in the show cause notice dated 4-7-2012 would not be challenged by them before the Adjudicating Authority. Brief facts of the case as pleaded by the petitioner are that the petitioner-firm imported Plain Plastic Film and filed bill of entry dated 20-8-2011, which was seized by the respondent on 1-9-2011. The petitioner filed Civil Writ Petition No. 17968 of 2011 before this Court seeking release of goods and a direction was issued that the petitioner would appear before the Investigating Officer who would pass an appropriate order. The request of the petitioner for the provisional release of goods was rejected vide order dated 2-1-2012. This Court while disposing of the aforesaid

Civil Writ Petition gave liberty to the petitioner to file an appeal against the said order. The seizure was extended by order dated 29-2-2012 by the respondent for a further period of six months. The appeal filed by the petitioner before the Customs, Excise and Service Tax Appellate Tribunal was allowed on 18-4-2012 2012 (282) ELT 415 on the ground that the order was violative of principle of natural justice. Thereafter, the respondents issued show cause notice dated 4-7-2012 for determining the quality of the film imported and the duty which was levied upon it and predetermined the value at Rs. 1,19,32,574/- and why it should not be confiscated. However, on 5-7-2012 the Joint Commissioner also directed the provisional release of the goods subject to the following conditions:-

(i) The party will deposit the differential duty to the tune of Rs. 24,32,242/- (32,03,825/- minus Rs. 7,71,583/-).

(ii) The party will execute the bond for full value of goods i.e. Rs. 1,19,32,754/- supported with 25% bank guarantee with auto renewal clause to the Assistant Commissioner, CFS (CONCOR), Ludhiana.

(iii) The party will undertake that the description of the goods/their quality/age/ or other technical specifications/characteristics/identity etc. including analyses/ test reports as mentioned in the Show Cause Notice No. VIII-CUS/ICD/LDH/JCU/ SCN/Om Udyog/107/12/2397-2401 dated 4-7-2012 will not be challenged by them, at any stage, during presenting their case before the Adjudicating Authority in the absence of the goods.

2. The petitioner feeling aggrieved against the imposition of the conditions (ii) and (iii) has approached this court on the ground that though it had already furnished the security and was ready to furnish the bond but harsh conditions of furnishing bank guarantee to the tune of 25% of the value of the goods had been imposed. Similarly condition No. (iii) had been imposed regarding furnishing of undertaking that the identity of the goods would not be challenged before the Adjudicating Authority which was mentioned in the show cause notice dated 4-7-2012.

3. The said prayer was opposed by filing the written statement. A preliminary objection has been taken that the petitioner has an alternative remedy of appeal u/s 128 of the Customs Act, 1962. Justifying conditions imposed for the provisional release of the goods, it has been pleaded that the petitioner would dispose of the goods during the pendency of the adjudicating proceedings and, therefore, in such circumstances conditions imposed were appropriate. It has also been submitted that goods were liable to be confiscated yet they had been ordered to be provisionally released. On the aforesaid premises, the imposition of impugned conditions were sought to be justified.

4. The matter herein stands concluded by the earlier judgment of this court rendered in Amit Enterprises v. Union of India-2011 (269) E.L.T. 314 (P & H). It was recorded as under:

11. We find merit in the contention that requirement of giving a declaration that the petitioner will not challenge the value of the goods, in unreasonable and arbitrary. The petitioner cannot be debarred from asserting its version as to the value and classification of goods. If such a condition is allowed to be imposed, the department can unilaterally allege any valuation and continue to keep the goods under detention unless the affected party agrees to withdraw the challenge to the valuation. This will amount to denial of justice. Similarly, requirement of furnishing bank guarantee equal to 25% of the full market value of the seized goods is also, in the facts and circumstances of the case, arbitrary. Mere fact that condition of 10% of bank guarantee was upheld by this Court in T.L. Verma and M/s. Kundan Rice Mills cannot be justification to impose such conditions in each and every case. In those cases, this Court was satisfied that the importers had adopted fraudulent tactics which, prima facie, justified opinion for confiscation of goods. The said judgments cannot apply to every case of detention. Mere allegation of liability to confiscation is not enough. Circumstances and grounds justifying opinion about liability to confiscation is open to judicial scrutiny.

5. Following this decision in Era International Vs. Union of India (UOI) and Others, , similar conditions imposed regarding furnishing of bank guarantee and declaration as a condition for release of goods was set aside by this Court with the under-noted observations:

7. Similar matter has been earlier dealt with by this Court on 9-5-2011 in CWP No. 6732 of 2011 M/s Amit Enterprises Vs. Union of India and Others, and it was held that prima facie there was violation of judgment of the Hon''ble Supreme Court in Commissioner of Customs Vs. Sayed Ali and Another, , laying down that seizure can be effected only by an officer specifically authorized to act as such. In the present case, no such authority has been produced by the officer effecting seizure. It has also been held that imposition of a condition to the effect that the value of goods will not be challenged at any stage, is abuse of power, as no person can be debarred from asserting its case. It has been further held that requirement of furnishing bank guarantee equal to 25% of the full market value of the goods could not be justified on a simple dispute of classification and valuation. It has also been held that gross delay in taking decision after seizure without any valid justification was arbitrary. Mere dispute of classification or valuation could not justify power of confiscation and imposing of condition of furnishing of bank guarantee equal to 25% of the value of the goods. The said C.W.P. No. 13131 of 2011 judgment is not shown to be distinguishable in its applicability to the present case.

8. Accordingly, we allow this petition and direct immediate provisional release of goods on conditions mentioned in the order of provisional release except the requirement of declaration that the petitioner will not dispute the value of goods and will furnish bank guarantee. In respect of second consignment, the release will be on payment of customs duty as per valuation of the chartered engineer. It

is, however, made clear that this order will not affect merits of the controversy to be adjudicated upon in accordance with law.

6. In a recent decision in Civil Writ Petition No. 8148 of 2012 (M/s. Shilpi Crafts v. Union of India & Others) decided on 18-7-2012, this Court followed the earlier judgments, wherein similar conditions imposed had been challenged and set aside and the plea of non maintainability of the writ petition on the ground of alternative remedy was also rejected.

7. Adverting to the present facts, the goods were seized on 1-9-2011 and the request for provisional release was rejected on 2-1-2012. The period of seizure was extended on 29-2-2012 for a further period of six months. A period of one year has expired since the goods were seized and now the Joint Commissioner has directed provisional release of goods subject to above conditions. At this stage to relegate the petitioner to the remedy of appeal again under the statute would be too harsh as he had imported the film for the purpose of trading. The matter is yet to be adjudicated upon by the authorities in pursuance to show cause notice dated 4-7-2012 and, therefore, alternative remedy would not be efficacious remedy in the facts and circumstances of the instant case particularly when the legal position already stands settled that the respondents are not empowered to put such onerous conditions for provisional release of seized goods. The learned counsel for the respondents was unable to satisfy this Court that there existed any distinguishing feature in view whereof, the law laid by this Court was not applicable herein.

8. Accordingly, the writ petition is allowed. The order dated 5-7-2012 ordering the provisional release of goods is modified to the extent that the petitioner shall not be required to furnish bank guarantee to the tune of 25% of the value of the goods assessed by the authorities and also that he will not be bound to give undertaking as required in Clause (iii). The respondents are directed to release the goods in question to the petitioner within a period of two weeks from the date of a receipt of a certified copy of this order. However, it is made clear that any observation made herein shall not be taken to be an expression of opinion on the merits of the controversy.