(2000) 07 MAD CK 0072

In the Madras High Court

Case No : Writ Petition No''s. 8628 and 8656 of 2000 and W.M.P. No''s. 12729 and 12759 of 2000

P. Periyaswamy Alagu APPELLANT

Vs

Senior Intelligence Officer RESPONDENT

Date of Decision : 25-07-2000

Acts Referred:
Customs Act, 1962 — Section 108, 109, 110, 111, 125

Citation : (2001) 73 ECC 373 : (2000) 122 ELT 357

Hon'ble Judges : P.D. Dinakaran, J

Bench : Single Bench

Advocate : S.S. Radhakrishnan, for the Appellant; C. Krishnan, Sr. C.G.S.C., for the Respondent

Judgement

P.D. Dinakaran, J.—Alleging that the unaccompanied baggages of the petitioners in the above writ petitions were mis-declared, the respondents have seized the same. Hence, the above writ petitions.

2. In W.P. No. 8628 of 2000, the petitioner prays for issue of a Writ of Mandamus to direct the first respondents to release the goods covered under the Unaccompanied Baggages No. 900/2000 and T.R. No. 737/2000 seized by the first respondent on 15.05.2000 and to further direct the first respondent not to proceed further in the matter as the action initiated by the first respondent is arbitrary and against law.

3. In W.P. No. 8656 of 2000, the petitioner prays for issue of a Writ of Mandamus to direct the first respondent to release the goods covered under the Unaccompanied Baggages No. 901/2000 and T.R. No. 738/2000 seized by the first respondent on 15.05.2000 and to further direct the first respondent not to proceed further in the matter as the action initiated by the first respondent is arbitrary and against law.

4. According to the petitioners, the value of the goods in W.P. Nos. 8628 and

8656 of 2000 are Rs. 65,000/- and Rs. 66,000/- respectively. As against the said value, the second respondent has valued the respective goods as Rs. 1,16,004/- and Rs. 1,14,840/- in these writ petitions. Thereafter, the first respondent, after a further investigation valued the goods of the petitioners in W.P. Nos. 8628 and 8656 of 2000 as Rs. 2,44,4127- and Rs. 2,32,2607- respectively.

5. Placing reliance on the decision in M/s. Mohan Meakin Ltd. Vs. The Commissioner of Central Excise, Kochi, , the learned counsel for the petitioners contends that it is not open to the Collector to initiate another proceeding under another clause of Section 111 of the Customs Act, 1962, for recovery of so-called differences in valuation of imported goods from the ultimate bonafide purchaser for value, as, irrespective of under which Sub-clause Section 111 the adjudication made, it was obligatory on the part of the adjudicating authority to find out the market value of goods imported and collect all duty and charges payable before releasing the goods on payment of redemption fine, as per Sections 111(d), 111(m) and 125 of the Customs Act, 1962.

6. Per contra, Mr. C. Krishnan, learned Senior Central Government Standing Counsel appearing for the respondents, contents that the writ petitions are not maintainable for not impleading the Union of India, and that the goods seized from the petitioners are not bonafide domestic articles, but they are goods of commercial nature, which can be confiscated by the respondents by exercising power under Sections 108 to 110 of the Customs Act, 1962. It is further contended that as the respondents have already initiated confiscation proceedings under Sections 111(d) and 111(m) of the Customs Act, 1962, the petitioners are not entitled for the relief as sought for.

7. I have given a careful consideration to the submissions of both sides.

8. In my considered opinion, the relief sought for by the petitioners is premature in nature and the goods seized by the respondents are subject matter of confiscation proceedings, as rightly contended by the learned Senior Central Government Standing Counsel. Hence, it may not be proper to keep the goods pending with the custody of the respondents indefinitely nor to ignore the interest of the State in the matter of such confiscation proceedings. Therefore, it is suffice to direct the respondents to complete the investigation within four weeks from today and on completion of the said period, the second respondent shall release the goods on condition that the petitioner in W.P. No. 8628 of 2000 shall deposit a sum of Rs. 1,16,0047- and the petitioner in W.P. No. 8656 of 2000 shall deposit Rs. 1,14,8407- to the credit of the respective confiscation proceedings and the petitioners shall also furnish bank guarantee for the balance amount of valuation, viz., Rs. 1,28,4087- in W.P. No. 8628 of 2000 and Rs. 1,17,4207- in W.P. No. 8656 of 2000. The said deposit and the bank guarantee shall be subject to the result in the confiscation proceedings.

The writ petitions are disposed of accordingly. Consequently, W.M.P. Nos. 12729 and 12759 of 2000 are closed.

