(2001) 09 BOM CK 0053

In the Bombay High Court

Case No : Writ Petition No. 2146 of 2001

Pacific International Traders APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 06-09-2001

Acts Referred:
Customs Act, 1962 — Section 48

Citation : (2002) 142 ELT 544

Hon'ble Judges : S.A. Bobde, J;A.P. Shah, J

Bench : Division Bench

Advocate : V.S. Malkani and M.G. Gawde, for the Appellant; J.P. Deodhar and K.R. Choudhary, for the Respondent

Judgement

A.P. Shah, J.—Rule. Respondents waive service. By consent petition is taken up for final hearing.

2. The petitioner is a foreign based company engaged inter alia in the business of trade in electronics goods. By the present petition, petitioners are seeking a direction to return and/or re-export the goods imported by them from Hong Kong which are unclaimed by the buyers. The petitioners are owners of the said goods. The goods were supplied on "consignment basis" but the buyers in India have refused to accept the goods and clear the same. The consignment arrived in India sometime during October/November, 2000. The petitioners contacted the buyers and repeatedly requested them to clean the goods but the goods were not cleared. The submission of the petitioner is that since the buyers have refused to take the consignment the petitioners as owners of the goods are entitled to the return thereof.

3. It is an admitted position that the bill of entry has not been filed and the buyers have virtually abandoned the goods and in fact they have taken a stand that they have not even imported the goods. In the case of Union of India and another Vs. Sampat Raj Dugar and another, the Supreme Court has held that if the bill of entry is not filed by the importer and the importer has abandoned the

goods title in the goods will not pass to the im porter and the exporter will be entitled to re-export or return of the goods.

4. Mr. Deodhar, learned Counsel appearing for the respondents has not disputed that the subject goods have not been cleared by the importer and consequently the ownership will rest with the exporter i.e. owner of the goods, Mr. Deodhar, however, drew our attention to the affidavit in reply filed on behalf of the respondents wherein it is stated that there is conspiracy between the petitioners and the so-called importers to under-value the goods and thereby depriving the Government of the legitimate import duties. It is stated that there were 5 earlier consignments by the same exporter and the consignment was disclaimed by the importer in similar fashion. Upon detailed examination carried out on the strength of declaration contained in the respective bills of lading it was found that the goods were not in conformity with the declared description and quantity as contained and declared in the respective bills of lading. It is stated that notices have been issued to the importers and earlier 5 consignments were seized for misdeclaration and these consignments are liable to confiscation under Sections 111(m) and 111(d) of the Customs Act, 1962.

5. With regard to the submission of Mr. Deodhar regarding alleged conspiracy to defraud exchequer, notices have been already issued to the importers in respect of earlier consignments and necessary steps have been taken by the department and proceedings are going on in that behalf. We are, however, not concerned with the earlier consignments. As far as the present consignment is concerned, which is the subject matter of this petition, even the bill of entry is not filed by the importers nor import documents produced and in fact they have abandoned the goods. It is not possible to link the present consignment with the earlier consignments which were allegedly undervalued. It is seen from record that the importers have not claimed any right title and interest in respect of the said goods nor have presented the bill of entry. In the circumstances we do not see any justification on the part of the respondents in detaining the goods which are abandoned by the consignees.

6. In a similar situation the Division Bench in the case of J.P. Electronics Pte. Ltd. Vs. Union of India (UOI), has held that the consignment cannot be withheld merely on the ground that there is suspicion that the consignment was under-valued. The Division Bench has observed as under:

"It is pertinent to note that in case of the first consignment which arrived on 30-6-2000, necessary steps were taken and proceedings are being held for the alleged under-valuation against M/s. Rahul Associates. However, it seems that the second consignment which was sent to M/s. Rahul Associates is detained only on the assumption that it would have been under-valued. Significantly, it cannot be overlooked that M/s. Rahul Associates had not filed any Bill of Entry or import document, and in fact they expressed their intention to abandon the goods due to their bad financial condition. Hence, the second consignment which is in dispute, cannot be linked with the first consignment which was allegedly undervalued only because it was also sent in the name of M/s. Rahul Associates, especially when M/s. Rahul Associates have not claimed any right, title or interest to the goods nor have presented bill of entry or any import document claiming the goods from the date of detention and hence it would not be legal and proper on the part of the respondents to detain the goods which are abandoned by the consignee."

In the light of the above decision of the Division Bench we are inclined to allow the present petition and to permit the petitioners to re-export the goods as prayed for.

7. Accordingly, Rule is made absolute in terms of prayer Clauses (a) and (b). No order as to costs.

8. On the request of Mr. Deodhar, operation of this order is stayed for a period of 6 weeks.

9. The parties and the authorities to act on the ordinary copy of this order duly authenticated by the Personal Secretary of this Court.

