(2010) 03 KL CK 0127

In the High Court Of Kerala

Case No : Writ Petition (C) No. 7653 of 2010 (F)

Platinum Enterprises APPELLANT

Vs

Commissioner of Customs RESPONDENT

Date of Decision : 22-03-2010

Acts Referred:

Citation : (2010) 256 ELT 33

Hon'ble Judges : T.R. Ramachandran Nair, J

Bench : Single Bench

Advocate : P.A. Augustian, for the Appellant; Thomas Mathew Nellimoottil, SC CBEX, for the Respondent

Judgement

T.R. Ramachandran Nair, J.—The petitioner firm had imported fast moving consumer goods through Cochin Port and filed bill of entry No. 259811 dated 18-12-2009. At the time when the Bill of Entry was issued the petitioner submitted invoice issued by overseas supplier showing value of the goods as Rs. 3,27,178/-. According to the petitioner without any reason, respondent adopted higher value of Rs. 37,70,688/- and demanded customs duty of Rs. 6,97,982/-. Ext. P1 is the copy of the Bill of Entry. The petitioner paid customs duty as demanded by respondent on 2-1-2010 which is evidenced by Ext. P2, true copy of the TR6 challan No. 99090603 dated 2-1-2010. It is contended that the respondent has taken a higher value. In these circumstances, the petitioner approached the respondent to rectify the mistake. Petitioner then served Ext. P3 legal notice which did not evoke a response. Accordingly, the petitioner seeks for a direction to issue a speaking order with regard to the assessment of duty and refund the excess duty collected. Reliance is placed on Ext. P4 judgment of this Court rendered in identical circumstance.

2. Heard the learned Standing Counsel for the W.P.(C) No. 7653 of 2010 respondent. It is submitted by the learned Standing Counsel that even the bill of entry is appealable and therefore the petitioner has to file an appeal in the matter. Reliance is placed on decisions of the Appellate Tribunal in 2005 (192)

ELT 246 , Ashoosons v. Commissioner of Customs, New Delhi 2009 (239) E.L.T. 107 and State of Goa v. Leukoplast (India) Ltd. 1997 (92) E.L.T. 19 (S.C.).

3. There cannot be any objection to pass a speaking order in the matter so that the petitioner will get the benefit of challenging the same by way of appeal and the appellate authority will also get the opportunity to consider the matter, after verifying the reasons for charging the duty.

4. Therefore, there will be a direction to the respondent to pass a speaking order in respect of assessment in question as expeditiously as possible at any rate within a period of two weeks from the date of receipt of a copy of this judgment.

5. The writ petition is disposed of as above. No costs.