(1998) 03 CAL CK 0031

In the Calcutta High Court

Case No : Writ Petition No. 2165 of 1997

Porcelain Crafts and Components Exim Pvt. Ltd. APPELLANT

Vs

Commr. of Cus. RESPONDENT

Date of Decision : 20-03-1998

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (1998) 102 ELT 11

Hon'ble Judges : Y.R. Meena, J;Bijitendra Mohan Mitra, J

Bench : Division Bench

Advocate : Kapoor, for the Appellant;Mitra, ASG, for the Respondent

Judgement

1. There shall be an order in terms of prayer (a) of the petition.

2. By this stay petition the appellants prayed that operation of the judgment and order dated 27th February, 1998, passed by the learned Trial Judge be stayed as also the proceedings pending before the Commissioner of Customs. The appellants further prayed that the goods bearing 74 cartons of Ceramic articles loaded in trailer no. WB 15-2653 and now lying in the dock, be returned to the appellants forthwith.

3. The learned Counsel for the appellant Mr. Kapoor submits that once the value of the goods has been assessed and duty has been paid, as determined by the Customs Authorities, the Officer of the Directorate of Revenue Intelligence has no power to detain the goods. He further submits that any proceedings, after filing of this writ, should be stayed as they are without jurisdiction. He further submits that once the duty is paid, no authority in the Department has power to reassess the value of the goods in question.

4. The learned Additional Solicitor General Shri Mitra submits that the job of the Intelligence of the Revenue Department is to stop the evasion of duty. In any case if they find that duty has been evaded, they can intervene and prevent that evasion of duty and in cases where the value is assessed, duty is determined,

but the value of the goods were undervalued in such cases Intelligence Department has power to intervene and they can detain the goods.

5. A query was put to the Counsel for the respondent as to whether the duties of the Officers of the Directorate of Revenue Intelligence has been specified. In reply though he could not bring the exact Rule or Regulations under which the powers and function of Officers of Intelligence Department is given, but he referred to some judgments wherein reference to affidavit and notifications issued by the Department where in powers of Intelligence Department has been given. He also drew our attention to the observations of the Court in the case of Union of India (UOI) Vs. Sigma Electronics, At page 31 this Court observed as under :

"The Revenue Intelligence wants to make certain enquiry into the matter - true it is, that Customs have released the goods but that cannot, however, put an embargo into an enquiry by the Revenue Intelligence. The Revenue Intelligence have their own duty to perform so as to check evasion of duty and to discover illegal import and if during the course of such a duty certain enquiries are required to be made, in my view, question of law courts'' intervention or interference therewith does not and cannot arise. It is a mere enquiry as noted above without there being any penal element. While it is true that in the notice the word "smuggling" has been penned through, but that by itself would not give a cause of action for interference under Article 226 of the Constitution."

6. Even assuming that the functions and powers of the Officers of the Department of Revenue Intelligence has not been specified, but it cannot be denied that they can intervene when there is an evasion of customs duty. Thus prima facie we are not agreeing with Shri Kapoor, learned Counsel for the appellants that the Revenue Intelligence has no power to intervene once the value and duty of the goods are determined by the authority in the Customs Department. Shri Kapoor placed reliance on R.C. Fabrics (P) Ltd. Vs. Union of India, In the case of R.C. Fabrics (P) Ltd. v. Union of India. In paragraph 15 itself the Court has observe that once the adjudicatory authority gives an option to the importer to redeem the goods on payment of fine, the said order should be given effect to unless the procedure as laid down in Sub-section (3) to (4) of Section 129D of the Act is resorted to and the order is set aside by the competent authority.

7. In the case in hand it is not the case of the appellants that the departmental authorities had not acted in accordance with the provision of Section 129D of the Act.

8. Considering these facts and law referred above, we find no case for any stay of operation of any order, nor any direction can be given to the department or authority for stay of any proceedings pending before them, more so by reason of the fact that the Trial Judge himself has directed the respondents to take all necessary steps in the matter to complete the necessary proceedings including

the investigation within six weeks from date.

9. Considering the reasons given above and the directions of this Court, in our view, no case is made out for stay. Hence, the stay application is rejected.

10. There shall be no order as to costs.

11. All parties to act on a xerox signed copy of this Dictated Order on the usual undertakings.