(2003) 08 MAD CK 0168

In the Madras High Court

Case No : Writ Petition No''s. 40388 of 2002 and 554 of 2003, W.P.M.P. No''s. 59933 of 2002 and 17836 of 2003 and Cont. Petition No. 290 of 2003

Prakash Industries APPELLANT

Vs

Shri Vittal Das Commissioner of Customs (Air Port), Shri. Veerayan, Additional Director General of Revenue Intelligence, Directorate of Revenue Intelligence, Shri. Nagarajan, Deputy Director of Revenue Intelligence, Directorate of Revenue Intelligence and Shri. Sampath Kumar, Senior Intelligence Officer, Directorate of Revenue Intelligence RESPONDENT

Date of Decision : 01-08-2003

Acts Referred:
Customs Act, 1962 — Section 108, 18

Citation : (2003) 08 MAD CK 0168

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : R. Sudhakar and Senthil Kumar, for the Appellant; M.N. Kannadasan, SCGSC, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Misra, J.—Heard the Learned Counsels appearing for the parties. Since the writ petitions and the miscellaneous petitions as well as the contempt petition are inter-connected and are being decided by this common order, it is necessary to notice the facts and circumstances giving rise to all these matters.

2. The common petition in all these matters is engaged in the business of import of various commodities. The Petitioner firm was importing beads prepared from plastic granules used for the manufacture of jewellery. Prior to the present disputed consignment, 14 other consignments of beads had been imported and the duty assessed by the first Respondent, namely the Commissioner of Customs (Airport), Chennai, had been paid. The Petitioner firm imported the consignment of beads of 187.47 kgs. From Hong Kong and filed Bill of Entry No. 461039 dated

10.10.2002 in the office of the first Respondent for clearance. The Petitioner firm submitted an invoice declaring the price at 749.88 C & F Chennai with a unit price of US$ 4.00 per Kg. Before the goods could be cleared, the Respondents 2 & 3, namely the Additional Director of Revenue Intelligence and the Deputy Director of Revenue Intelligence, visited the Air Cargo complex and examined the goods. Before such inspection, the Respondents 2 & 3 have also called the Petitioner and had made certain enquires. A week thereafter, summons was issued by 4th Respondent, the Senior Intelligence Officer, directing the Petitioner to appear before him. Accordingly the Petitioner appeared and a statement was recorded relating to the transaction in question. However, the goods in question were not cleared and the Petitioner addressed a letter dated 21.10.2002 to 4th Respondent. Subsequently, a fresh summons in terms of Section 108 of the Customs Act was issued to the Petitioner requiring the Petitioner to bring the original documents, namely, purchase order, invoice, country of origin certificate, manufactures price list, etc. The Petitioner appeared on 28.10.2002. It is alleged by the Petitioner that he was physically ill-treated and it is stated that a complaint had been lodged. Thereafter, a fresh summons u/s 108 was issued directing the Petitioner to appear on 06.11.2002. It is contended by the Petitioner that there has been no violation on his part and he has been unduly harassed. On the basis of such allegations, W.P. No. 40388 of 2002 has been filed with a prayer to issue Writ of Mandamus directing the 2nd, 3rd and 4th Respondents to complete any investigation with regard to the import made by the Petitioner firm under Bill of Entry No. 461039 dated 10.10.2002 within a time frame that may be fixed by this Court without causing any harassment to and manhandling of the Petitioners and to grant interim injunction restraining 4th Respondent from proceeding further in respect, of the summons issued by 4th Respondent dated 29.10.2002, pending disposal of the Writ Petition.

3. The said writ petition was admitted on 01.11.2002. An order of interim injunction dated 1.11.2002 restraining 4th Respondent from proceeding further in respect of summons dated 29.10.2002 was granted by a learned single judge of this Court and subsequently, such order was extended by order dated 13.12.2002 for eight weeks.

4. While the matter stood thus, the Petitioner filed W.P. No. 554 of 2003 for issuing writ of Mandamus directing the Respondents to release the goods covered by Bills of Entry No. 461039 dated 10.10.2002 pending further investigation subject to any conditions deemed fit.

5. By order dated 08.01.2003, it was directed that a copy of the writ petition should be served on the Senior Counsel representing the Central Government and to post the matter on 10.01.2003. On the said date, while admitting the writ petition, an interim order was passed to the following effect:

Heard the learned Counsel for the Petitioner. Copy of the petition has already been sent to the learned Senior Standing Counsel pursuant to the order dated 08.01.2003. Without prejudice to the contentions raised in the writ petition, as an interim measure, it is directed that the first Respondent shall release the articles in favour of the Petitioner subject to the Petitioner depositing the admitted amount of Rs. 13,102.40 and also furnishing bank guarantee for Rs. 5,000/- and filing a bond for Rs. 15,000/- and also undertaking to pay any such amount ultimately that may be found liable. These conditions shall be fulfilled within a period of 7 days and the articles in question may be released within a period of 3 days thereafter.

6. Since the aforesaid order was not complied with, the Petitioner filed Contempt petition No. 290 of 2003 on 27.03.2003 against the four officers concerned. Notice was issued in the contempt petition on 11.04.2003.

7. From the reply filed by the Respondents, it appears that after the order dated 10.01.2003 received by DRI, Chennai on 21.01.2003, the Respondents sought for legal opinion for the purpose of filing appeal. It further appears that an application was filed on 27.01.2003 for extension of time. In such application, it was indicated that the Respondents intend to file appeal against the order dated 10.01.2003. It is stated by the counsel appearing for the Respondents that in fact the order which was communicated to the Respondents did not clearly indicate that the writ petition was pending and only an interim order was passed. The writ appeal filed beyond the stipulated period of limitation is stated to have been withdrawn in the meantime. It is also to be noticed that an application for modifying the order dated 10.01.2003 has also been filed, which was numbered as WPMP. No. 17836/2003. Various allegations regarding alleged use of physical force is denied by the Respondents. It is the contention of the Respondents that the matter was under investigation as the Respondents suspect that the goods in question had been under-valued and there has been nondisclosure. It has been stated in reply relating to the Contempt Petition that it was not the intention of the Respondents to flout the order of this Court, but the Respondents wanted bonafide to pursue the matter in appeal and in fact had filed application for extension of time.

8. Learned Counsel for the Petitioner has submitted that in the meantime, in respect of other imports by other persons, the Department has fixed the valuation at the slightly higher rate and even if such valuation would be assessed for the goods in question, differential amount would be only Rs. 26,000/- and the Petitioner is ready to furnish and additional bond to cover such amount. Learned Counsel has also submitted that since as per the direction of the High Court an undertaking is to be furnished to pay any amount ultimately found due. the department need not have any apprehension that the Petitioner would not pay the amount if any ultimately found, as breach of such undertaking given pursuant to the order of this Court would amount to contempt of Court as order. Learned Counsel for the Petitioner has produced documents indicating that the Petitioner is an income tax Assessee and having house property. Learned Counsel for the Petitioner is willing to appear before 4th Respondent or any other officer to be nominated by 3rd Respondent and prepared to co-operate in the matter

relating to investigation. He has however submitted that the goods in question should be released at an early date.

9. Learned Counsel for the Respondents on the other hand has submitted that ultimately if it is found that the Petitioner would be liable to pay any further amount, the apartments would not be in a position to recover such amount, and therefore, proper security is to be ensured.

10. Section 18 of the Customs Act contemplates release of goods on furnishing of appropriate security. It is not disputed that similar goods imported earlier have been released.

11. Having heard the learned Counsels appearing for the parties and considering the fact that investigation is pending, it would not be proper to express any opinion on the merits of the contentions raised in both the writ petitions. Having regard to the facts and circumstances of the case and keeping in view the various subsequent events and other materials on record, in the interest of justice, I dispose of all the matters by giving the following directions:

(1) Investigation in question may continue said may be completed as expeditiously as possible and it would be open to the appropriate authorities with law after completion of the Investigation. Such investigation may be undertaken either by 4th Respondent or any other officer nominated by 3rd Respondent. It is made clear that the above observation should not be construed as reflection on the conduct of any of the Respondents.

(2) The Petitioner shall appear on 05.08.2003 at 10.30 A.M. before 4th Respondent or any other officer to be nominated and shall continue to appear on 6th and 7th August, 2003, if necessary.

(3) The Petitioner shall furnish an additional bond for Rs. 26,000/- before the authority concerned. The Petitioner shall also file an affidavit undertaking to pay any amount ultimately found due. The additional bond and the undertaking shall be produced by 05.08.2003.

(4) On compliance with the directions regarding furnishing of additional bond and an undertaking the goods in questions may be released forth with.

(5) Since such an undertaking is to be given pursuant to the order of this Court, breach of such undertaking shall be construed as contempt of this Courts order and it would be open to the Respondents, apart from taking appropriate steps for recovery of any amount found ultimately due. to seek for initiation of any proceedings under the Contempt of Courts Act. The filing of such the Petitioner to pursue the remedies available under law. Subject to the aforesaid directions, both the writ petitions are disposed of and all the previous orders in both the writ petitions and connected miscellaneous petitions stand modified/ superseded.

12. Since the Respondents had filed an application for extension of time and subsequently filed an appeal and petition for modification, in the peculiar facts

and circumstances of the case it cannot be said that they had willfully violated the orders of this Court. The contempt petition is therefore closed.

13. In the result, both the writ petitions and all the miscellaneous petitions are disposed of subject to the aforesaid directions and the contempt petition is closed.

