(2011) 08 CAL CK 0029

In the Calcutta High Court

Case No : Writ Petition No. 611 of 2011

Prince International APPELLANT

Vs

Additional Director General of Dri RESPONDENT

Date of Decision : 16-08-2011

Acts Referred:

Customs Act, 1962 — Section 108, 17, 46, 49

Citation : (2012) 282 ELT 193

Hon'ble Judges : Indira Banerjee, J

Bench : Single Bench

Advocate : V.V. Gautam with Prabodh Shukla, for the Appellant; R. Bharadwaj with S.K. Saha, for the Respondent

Judgement

Indira Banerjee, J.—In this writ application the petitioner has sought orders for release three consignments imported by the petitioner. The petitioner has also sought interim orders for warehousing of the goods lying in Container No. TGHU6266720 u/s 49 of the Customs Act, 1962. According to the petitioner, the petitioner, in course of business imported three consignments from M/s. International Trading Company Limited of which details are given in paragraph 2 of the writ petition.

2. According to the petitioner, the first consignment was of wooden strip and wooden beading, stuffed in container No. 00LUB132654 of the transaction value of US $11,117. On receipt of Invoice No. AST090410 dated 5th January, 2011, Packing List and Bill of Lading, the petitioner filed Bill of Entry No. 2845686 dated 24th February, 2011 u/s 46 of the Customs Act, for clearance of the said goods.

3. According to the petitioner, the Bill of Entry was duly assessed u/s 17 of the Customs Act and the petitioner was required to pay duty as assessed. However before the consignment could be cleared upon payment of duty, the container was examined by Officers of the Directorate of Revenue (Intelligence).

4. The petitioner contends that on inspection, the goods stuffed in the container

were found in quantity, description and value to be as per the Invoice and Packing List and declaration made by the petitioner in the Bill of Entry. The consignment was, according to the petitioner, detained and Panchnama prepared. It is alleged that the panchnama was not made over to the representative of the Clearing Housing Agent.

5. According to the petitioner, the second consignment imported by the petitioner was of shoes for gents of the value of US $ 28125 which were stuffed in container No. THGU6266799 for which Bill of Lading had been issued by the shipper. On receipt of Invoice No. ASTO90408 dated January 5, 2011 the Packing List and Bill of Lading, the petitioner filed Bill of Entry No. 2842060 dated February 24, 2011 for clearance of the goods. However, while the Bill of Entry was pending assessment the container was examined by Officers of the Special Intelligence Branch of Kolkata Customs on March 1, 2011 and March 2,2011.

6. According to the petitioner, on inspection the goods stuffed in the container were found to be of the quantity, description and value specified in the Invoice Packing List and the Bill of Entry. It is alleged by the petitioner that the goods were illegally detained. It is further alleged that a Panchnama was drawn on the spot by the concerned Officers of the Directorate of Revenue (Intelligence) and/ or the Special Intelligence Branch of the Customs, but the copy of the panchnama was not made over to the representative of the Clearing House Agent.

7. According to the petitioner, the third consignment, which was of shoes for gents, shoes for ladies and button cell of the value of US $ 38764.20 was stuffed in container No. TGHU6266720, and a Bill of Lading was issued by the shipper. After receipt of Invoice No. ASTO90409 dated January 5, 2011, Packing List and Bill of Lading, but before the Bill of Entry could be filed for clearance of the consignment, the goods were detained by the Directorate of Revenue Intellegence, upon examination. A ''Panchanama'' was according to the petitioner, drawn but not made over to the petitioner''s Clearing House Agent.

8. Thereafter summons dated 11-3-2011, 14-3-2011, 28-3-2011, 29-3-2011 and 30-3-2011 were issued u/s 108 of the Customs Act and the petitioner was directed to appear before the Senior Intelligence Officer of the Directorate of Revenue (Intelligence), Kolkata, at his office on 14-3-2011, 15-3-2011, 28-3-2011, 30-3-2011 and 4-4-2011 respectively. According to the petitioner, he appeared on 14-3-2011, 28-3-2011, 30-3-2011 and his statement was recorded. On April, 2011 the petitioner did not appear, allegedly on account of the death of his elder aunt.

9. The petitioner has apparently been writing letters requesting the Directorate of Revenue (Intelligence) to permit destuffing and warehousing of three consignments to avoid the heavy demurrage that was accruing day by day, and also letters forwarding documents in justification of the declared value of the consignments such as contemporaneous import documents of identical goods.

However, the goods were neither released nor warehousing thereof permitted. In the aforesaid circumstances, the petitioner has approached this Court.

10. It is not for this Court to adjudicate factual issues of whether the goods were on inspection found to conform to declaration as made in the Bill of Entry and/or the Packing List and/or Invoice. The question is, whether consignments imported can be detained indefinitely without even passing any seizure order. Mr. V.V. Gautam, appearing on behalf of the petitioner, cited the Division Bench judgment of the High Court of Om Udyog Vs. Union of India (UOI) and Others, where the Division Bench in effect held that detention of goods beyond reasonable time could not be allowed, even though there might be justification for verification of goods. In Kundan Rice Mills Ltd. v. Union of India reported in 2008 (232) E.L.T. 14 (P & H), also cited by Mr. Gautam, the Division Bench held that there being urgency in release of goods, a party aggrieved by the illegal detention of goods or imposition of harsh terms for release thereof could invoke the writ jurisdiction of this Court, notwithstanding the existence of an alternative remedy. Mr. Gautam also cited State of Maharashtra Vs. Genu Yeshwant Divate, , where the Bombay High Court held that ''Panchnama'' was the sheet anchor for prosecution, and failure to provide the accused with the ''Panchnama'' would adversely affect the case of the prosecution. Mr. Gautam finally cited M/s Amit Enterprises Vs. Union of India and Others, where the Division Bench held that in case of disputes with regard to valuation, the department could not detain goods indefinitely. The Department was obliged to proceed with the investigation expeditiously.

11. Mr. Bharadwaj, appearing on behalf of the respondents, submitted that there were discrepancies between the declaration and the inspection report with regard to the description of certain goods. The attention of this Court was drawn to certain items that had not been declared in the Bill of Lading. Mr. Bharadwaj argued that the discrepancies required investigation. The goods had been undervalued with ulterior intent. The prices of branded goods were far too low. Moreover, the question of provisional release would arise when there was seizure in accordance with law. There was no seizure in this case.

12. There can hardly be any doubt that goods imported cannot indefinitely be detained. Necessary action would have to be initiated and expeditiously concluded. Almost six months have expired since the arrival of the goods.

13. There can be no doubt that the respondent authorities are entitled to investigate and ascertain whether the price declaration has correctly been made or whether the goods have been undervalued with ulterior motive. However, such investigation would necessarily have to be concluded with utmost expedition. Apparently this has not been done in the instant case.

14. The writ application is, thus, disposed of by directing the respondent authorities to conclude the investigation/proceedings, if any, within three weeks from the date of communication of this order and to release the goods in

question. If the investigation/proceedings cannot be concluded for any reason not attributable to the petitioner, the goods shall positively be released to the petitioner. Urgent certified copy of this judgment and order, if applied for, be supplied to the parties upon compliance of the requisite formalities.