(2016) 11 MAD CK 0007

In the Madras High Court

Case No : Writ Appeal No. 1349 of 2016

Principal Commr. of Cus. APPELLANT

Vs

V.K. Industrial Corpn. Ltd. RESPONDENT

Date of Decision : 17-11-2016

Acts Referred:

Citation : (2017) 346 ELT 545

Hon'ble Judges : Nooty Ramamohana Rao and Dr. Anita Sumanth, JJ.

Bench : Division Bench

Advocate : Shri T. Pramodkumar Chopda, Advocate, for the Appellant; Shri Sujay Kantawala, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Nooty Ramamohana Rao, J.—This appeal under Clause 15 of the Letters Patent has been preferred by the Department, calling in question the correctness of the order passed on 11-7-2016 in W.P. No. 13224 of 2016 by a learned single Judge of this Court.

2. Since the learned single Judge has very crisply brought all the relevant facts necessary for disposal of the case, mercifully, no controversy has been generated in respect thereof. It is also not in dispute that the goods imported through various Bills of Entry have been cleared, excepting the goods imported through Bill of Entry No. 3371951, dated 25-11-2015. The description of the imported goods in this Bill of Entry is entered as ''Hot Rolled Alloy Steel Coils''. In Paragraph 9 of the impugned order, the learned single Judge directed the Department to draw, in the presence of the writ petitioner, samples from the goods which have been detained, both from the lot of coils containing labels, indicating the grade, and the other lot of coils, which did not contain such labels, and then subject the samples so drawn to a test at the National Test House, Taramani, Chennai, at the expense of the writ petitioner. In the said paragraph, the learned single Judge has observed as under :

"On receipt of the report and after furnishing a copy thereof to the petitioner, the respondents shall finally assess the bill of entry and pass appropriate orders, within a period of two weeks from the date of receipt of a copy of the Test Report."

3. It is not in doubt, that the Test Report, dated 30-9-2016, has been made available to the Department on 3-10-2016. It is further not in dispute that on 17-10-2016, a comprehensive show cause notice has been drawn and the writ petitioner is called upon to answer the action proposed to be initiated against him in that show cause notice.

4. The only dispute which the Department has raised is as to the usage of the expressions "finally assess the bill of entry", used by the learned single Judge in the above quoted portion of the order, contained in Paragraph 9. Though we do not see any serious infirmity in using those expressions by the learned single Judge, to avoid any future controversy as to whether the usage of such expressions is meant to come in the way of the Department to take further action in accordance with law or not and also with a view to put at rest all speculative controversies, we prefer to substitute those words, namely, "finally assess the bill of entry" with the following words :

"act in accordance with the provisions of the Customs Act, 1962".

The rest of the directions contained in Paragraph 9 of the order under this appeal are retained, as it is.

5. We must also advert to one of the contentions canvassed by the learned counsel for the respondent-writ petitioner before us. He would urge that the goods have been cleared upon payment of duty, but, however, they are detained and the process thus far undertaken has revealed that the classification and the gradation, which have been entered in the self-assessment made by the importer, are found tallying.

6. Sri Pramodkumar Chopda, learned counsel for the appellant-Department would raise a contention that it may not be true and correct to say that the test report is completely matching with the standards and specifications and such a question is currently engaging the attention of the adjudicating authority; hence, we are not expressing any opinion thereof. We leave it to the parties to work out their remedies in accordance with law, in respect thereof. However, the goods cannot be detained. The purpose of detention has almost been achieved. The test results are available with the Department. What remains to be examined is, how best we can protect the interests of the Department and chances of its quick recovery of the duty, which might be levied against the importer. As of now, it is not disputed that the ''safeguard duty'', which is liable to be imposed on the goods of the nature, which are imported under the disputed Bill of Entry, is pegged at 20% of the value of Bill of Entry No. 3371951. The show cause notice itself has proposed that out of various goods imported through the Bill of Entry No. 3371951, 86 numbers of Hot Rolled Alloy Steel Coils have been detained, the

value of which has been worked out to Rs. 4,52,31,650/-. In such an event, the safeguard duty would work out to a little more than Rs. 90.00 lakhs.

7. Keeping the above facts in mind, we consider that ends of justice would be better served, by directing the appellants to release the detained goods imported through Bill of Entry No. 3371951 to the respondent/writ petitioner, subject to his fulfilling certain conditions. Accordingly, we pass the following order :

(1) The respondent/writ petitioner shall furnish an unqualified Bank Guarantee drawn on any of the nationalised/scheduled banks in favour of the Department in a sum of Rs. 25.00 lakhs.

(2) The respondent/writ petitioner shall execute an appropriate bond in favour of the Department.

(3) The respondent/writ petitioner shall promptly participate in the enquiry, initiated pursuant to the show cause notice, dated 17-10-2016.

(4) Upon fulfilment of the above conditions, the appellant-Department shall release the detained goods imported through Bill of Entry No. 3371951 to the respondent/writ petitioner forthwith, subject, of course, to the outcome of the enquiry, initiated pursuant to the show cause notice, dated 17-10-2016.

8. Writ Appeal stands disposed of accordingly. No costs. Consequently, the connected C.M.P. No. 17287 of 2016 is closed.