

(2007) 02 MAD CK 0004

In the Madras High Court

Case No : Writ Petitions No"s. 4956 and 5444 of 2007

Pushpanjali Silk Private Ltd. and Sree Rajendra Textiles

APPELLANT

Vs

The Commissioner of Customs (Seaport-Imports)

RESPONDENT

Pushpanjali Silk Private Ltd. Vs The Assistant/Deputy
Commissioner of Customs, Group 3 and 4
Sree
Rajendra Textiles Vs The Assistant/Deputy Commissioner of
Customs, Gr.7-B

Date of Decision : 27-02-2007

Acts Referred:

Customs Act, 1962 — Section 18

Citation : (2007) 118 ECC 260 : (2007) 144 ECR 260

Hon'ble Judges : K. Raviraja Pandian, J

Bench : Single Bench

Advocate : Habibullah Badsha for L. Maithili, in WP. 4956/2007 and K. Jayachandran, in WP. 5444/2007, for the Appellant; T.S. Sivagnanam, ACGSC, for the Respondent

Judgement

K. Raviraja Pandian, J.

W.P. No. 4956 of 2007

1. By consent the main writ petition itself is taken up for disposal.
2. The writ petition is filed for issuance of writ of mandamus directing the respondents to permit release of Mulberry raw silk imported under Bill of Entry No. 356906 dated 14.12.2006 on a provisional assessment basis at the declared value of USD 13.40 on furnishing a personal bond.
3. The necessary facts for the disposal of the writ petition are as follows : The petitioner is a company and importer of raw silk through Chennai port. The petitioner, in the course of its business, imported 8840.60 kgs of raw silk from Uzbekistan under the bill of entry No. 356906 dated

14.12.2006 declaring the value of the goods on the basis of the unit price at USD 13.40/kg. CIF as declared in the invoice of the foreign supplier.

On a query made by the respondents as to the country of origin, the petitioner filed a certificate issued by the Dubai Chamber of Commerce and

Industries certifying that the goods were of Uzbekistan origin. Though the bill of entry was filed on 14.12.2006 and necessary reply has been filed

to the queries, the goods were not permitted to be cleared. The petitioner by a letter dated 20.12.2006 informed the second respondent that

earlier also they imported Melburry raw silk from Uzbekistan regularly at Chennai port at the declared value of USD 14.25/kg CIF and were

permitted to be cleared at the marginal enhancement of USD 14.50/KG-CIF. The petitioner also furnished the particulars of those bills of entry in

that letter and requested the respondents to allow the petitioner to clear the goods in view of the urgent requirement of the goods and mounting

demurrage charges. In view of the urgency, the petitioner also offered that the goods be permitted to be cleared on the provisionally at the

declared value of USD 13.40/kg-CIF.

4. The petitioner was informed by the Assistant Commissioner of Customs, Chennai by his letter dated 05.01.2007 that the bills of entry had been

taken up for detailed investigation by SIIB. Since the process would take some time to complete, on 11.01.2007, the second respondent by a

letter informed the petitioner to take provisional release of the goods on condition that (i) the provisional assessment would be carried out by

adopting provisional duty of USD 28.00/kg CIF; (ii) the goods would be assessed provisionally to duty by adopting the declared unit price of

USD 13.40/kg-CIF; (iii) as instructed by SIIB, a PD bond for the full enhancement value backed by 120% bank guarantee for the differential duty

arising between declared value of USD 13.40/kg-CIF and provisional import value of USD 28/kg-CIF have to be executed by the petitioner. The

petitioner, by its letter dated 17.01.2007 replied that the adoption of provisional import value at USD 28/kg-CIF was not proper as the same

represented the value of certain imports from China of entirely different goods. By that letter the petitioner also stated that similar goods imported

from Uzbekistan of other importers had been cleared by the respondents themselves at USD 14.50/kg-CIF. The demand of PD bond for the full

enhancement value backed by 120% bank guarantee for the differential duty arrived between the declared value of USD 13.40/kg CIF and the

provisional import value of USD 28/kg-CIF is highly inequitable. The demand of 120% of bank guarantee is also without any reasonable cause.

The petitioner by that letter also requested to release the goods on submission of simple provisional bond without any bank guarantee or other

security since the petitioner is a regular importer possessing valid import export code number and the petitioner is ready to furnish bank guarantee

for the difference between the duty worked out on the basis of the value at USD 14.50/kg CIF and the duty liability worked out at the declared

value of USD 13.40/kg-CIF. That was followed by another letter dated 31.01.2007. Though the respondents directed the petitioner to appear in

person, as the attitude of the respondents is clear that they are sticking on to their letter dated 11.01.2007, the present writ petition is filed.

5. The primary contention of the respondents in their counter is that the unit price stated by the petitioner is very low when compared with the

prevailing unit price which would be not less than USD 25.00/kg. As the declared value was quite low when compared with the goods of similar

nature imported from China and the certificate of the country of origin was issued by Dubai Chamber of Commerce and Industry based on

expert's declaration, the issue was referred to the Special Intelligence and Investigation Branch (SIIB) for detailed investigation. However, the

petitioner was permitted to release the goods provisionally on execution of simple bond and bank guarantee at 120% for the differential duty

arising out of declared value at USD 13.40/kg CIF and proposed enhancement price of USD 28.00/kg CIF. Whether the goods are of

Uzbekistan origin or not and whether the certificate of origin issued by the Dubai Chamber of Commerce and Industry is genuine or not, are under

investigation.

6. Heard the learned Counsel on either side and perused the materials available on record.

7. The one and the only reason given by the respondents is that when similar goods imported from China has been cleared at USD 28/kg, the

declared price of the goods imported by the petitioner from Uzbekistan is USD 13.40 /kg. The genuineness of the origin of the country is also

under investigation. In order to safeguard the interest of the revenue, the petitioner was permitted to clear the goods provisionally by complying

with the conditions as stated above. Except this, there is no reason forthcoming from the respondents as to why, when similar consignments

imported from Uzbekistan have been cleared at USD 14.50/kg, these consignments have been directed to be cleared at the higher value of USD

28/kg. The substantial reason given by the respondents is that the genuineness of the country of origin of the goods imported is under investigation.

8. It is always open to the respondents to verify the genuineness of the details of imports, particularly, the certificate of origin of the country. But

when the invoice is clear, which shows that the value of the goods is USD 13.40/kg and when similar consignments have been cleared at USD

14.50/kg, mere assumption that the goods are identical to the one imported from China at the value of USD 28/kg, cannot by itself be a reason to

fix the same rate for provisional clearance of the goods of the petitioner and the demand for 120% bank guarantee for differential duty is

unrealistic.

9. Section 18 of the Customs Act provides that when the proper officer deems it necessary to subject any imported goods or export goods to any

chemical or other test for the purpose of assessment of duty thereon, the proper officer may direct that the duty leviable on such goods may,

pending production of such documents or furnishing of such information or completion of such test or enquiry, be assessed provisionally if the

importer furnishes such security as the property officer deems fit for the payment of the difference between the duty finally assessed and the duty

provisionally assessed.

10. Having regard to the statutory provision and in view of the fact that similar nature of goods (Mulberry raw silk) from Uzbekistan have been

cleared by the respondents themselves under bills of entry Nos. 256473 dated 15.07.2006; 315675 dated 13.10.2006; and 330532 dated

06.11.2006 at USD 14.50/kg, I am of the view that the conditions for provisional clearance given by the proceedings of the respondents dated

11.01.2007 are highly arbitrary and stand to no reason. Hence, the conditions contained in the above referred to proceedings of the second

respondent dated 11.01.2007 is hereby modified to the effect that the goods

covered under the bill of entry No. 356906 dated 14.12.2006 are directed to be released provisionally on the petitioner furnishing bank guarantee for the differential value between USD 13.40/kg, the declared value and USD 14.50/kg the cleared value of the goods of similar nature imported from Uzbekistan and also execute personal bond for the differential amount between USD 14.50/kg, the cleared value of the goods of similar nature imported from Uzbekistan at USD 28.00/kg, the import value provisionally assessed by the respondents, to the satisfaction of the second respondent.

W.P. No. 5444 of 2007

11. The dispute in the present writ petition is similar to that of the earlier writ petition. In this case the petitioner filed bills of entry in Nos. 370053 dated 05.01.2007 and 391723 dated 05.02.2007 by declaring the price of the Mulberry raw silk of Uzbekistan origin imported by the petitioner at USD 14.25/kg. The goods have not been cleared. Considering the mounting demurrage charges and other charges payable, the petitioner requested the second respondent to release the goods provisionally covered by such bills of entry. However the bills were not assessed. Hence, the present writ petition.

12. Except the bills of entry, there is no variation in the facts of the present case to the facts of the earlier writ petition as narrated above. Further, in so far as this petition is concerned, the petitioner's earlier five consignments have been cleared by the respondents themselves in bills of entry Nos. 256473 dated 15.07.2006; 266514 dated 31.07.2006; 315675 dated 13.10.2006; 330532 dated 06.11.2006; and 365506 dated 27.12.2006 at USD 14.50/kg covered under the very same contract dated 01.06.2006 under which the present disputed consignment is also covered.

13. For the reasons stated in the earlier writ petition, the goods covered by the bills of entry Nos. 370053 dated 05.01.2007 and 391723 dated 05.02.2007 are directed to be released provisionally on the petitioner executing personal bond for the differential amount between USD 14.50/kg, the cleared value of the goods of similar nature imported from Uzbekistan and USD 28.00/kg, the value provisionally assessed by the respondents, to the satisfaction of the second respondent. It is agreed that the petitioner

would pay duty at USD 14.50/kg.

14. With the modification in the impugned order as stated above, the writ petitions are disposed off. No costs. The connected miscellaneous

petitions are closed. The respondents are directed to assess the bills of entry at an early date so as to recover the amount due to the Government.