(2016) 02 KL CK 0178

In the High Court Of Kerala

Case No : W.P. (C) Nos. 24074 (H)/2015 and 39096/2015

R. Mohandas APPELLANT

Vs

Commissioner of Customs, Custom House and Others RESPONDENT

Date of Decision : 29-02-2016

Acts Referred:
Customs Act, 1962 — Section 110, Section 110A, Section 110-A, Section 125

Citation : (2016) 02 KL CK 0178

Hon'ble Judges : A. Muhamed Mustaque, J.

Bench : Single Bench

Advocate : M.S. Sajeev Kumar, for the Appellant; Thomas Mathew Nellimoottil, SC, for the Respondent

Final Decision : Allowed

Judgement

A. Muhamed Mustaque, J.—1. The short question that arises for consideration in these writ petitions is whether the petitioner is entitled for provisional release of the goods, pending adjudication, even if he is not the owner of such goods imported.

2. The petitioners in both the writ petitions are one and the same. He imported certain goods. He is the holder of a Importer-Exporter Code Number (IEC) issued under the Foreign Trade (Development and Regulation) Act, 1992. Based on an interim direction of this Court, an order has been passed under Section 110-A of the Customs Act, 1962 to release the goods provisionally pending adjudication. The provisional order is passed safeguarding the interest of the Customs Authority and after imposing certain conditions.

3. It appears that after causing investigation and based on the deposition of the petitioner, the Customs Authority took the stand that the petitioner is not the owner of the goods and therefore, the goods cannot be released to him on a provisional release. In fact, the writ petitions itself are filed seeking a direction to provisionally release the goods pending adjudication.

4. It is apposite to quote Section 110-A of the Customs Act, which reads as follows:

"110-A. Provisional release of goods, documents and things seized pending adjudication.-Any goods, documents or things seized under Section 110, may, pending the order of the adjudicating authority, be released to the owner on taking a bond from him in the proper form with such security and conditions as the adjudicating authority may require."

5. The above would indicate that provisional release can be made to the owner of the goods. However, it is to be noted that the under Section 125 of the Customs Act, after final adjudication is over, the goods can be released to the owner of the goods or to the person from whose possession or custody such goods have been seized. Section 125 was originally worded to give custody of such goods only "to the owner of the goods". An amendment has been made with effect from 27/12/1985 by incorporating a provision to give release of the goods to the person from whose possession or custody such goods have been seized. Section 125 is extracted below:

"125. Option to pay fine in lieu of confiscation.-(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods or, where such owner is not known, the person from whose possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit."

6. There is no corresponding amendment carried out in Section 110-A by incorporating the above provision to release the goods to any other person other than the owner of the goods.

7. Apparently, it is seen from the stand of the Customs Department that, by using the IEC issued by the Directorate General of Foreign Trade, the petitioner is bringing goods of others. As far as the Customs Authority is concerned and in terms of the Customs Act, it cannot be treated as a violation. It is a matter for the Directorate General of Foreign Trade to enter a finding whether there is any violation or not. To saddle with any liability on the petitioner under the Customs Act, one need not be the owner of the goods imported. If such stand of the Customs Authority is accepted, any importer of the goods can escape from the liability from the clutches of the Customs Act, by shifting the onus to the owner of the goods.

8. The intention of Section 125 is that, after adjudication, the Customs Authority is bound to release the goods to any person from whose custody such goods have been seized. If in terms of Section 125 such goods can be released to such person, there is no impediment in releasing goods to such a person in terms of Section 110A of the Customs Act. It is very clear that the Customs Act would recognise any person based on ownership or possession or court order for the

purpose of determination of any action in terms of the Customs Act. Section 110A cannot be read in isolation from Section 125 of the Customs Act. Both the provisions have to be read together to understand the scope of release.

9. If the petitioner has misused his IEC issued by the Directorate General of Foreign Trade, it is the matter for that Authority to consider the issue. The Customs Authority may bring it to the notice of that Authority about such misuse but that cannot be a reason to withhold the release ordered under Section 110A. In this context it is appropriate to refer to the judgment of the Hon''ble Supreme Court in Union of India v. Sampat Raj Dugar and Another [, 1992 AIR 1417] it is held as follows:

"1.3 The object underlying condition (ii) in Clause 5(3) is to ensure a proper implementation of the Imports (Control) Order and the Imports and Exports (Control) Act, 1947. The idea is to hold the licensee responsible for anything and everything that happens from the time of import till they are cleared through Customs. The exporter is outside the country, while the importer, i.e., the licensee is in India. It is at the instance of the licensee that the goods are imported into this country. Whether or not he is the owner of such goods in law, the Imports (Control) Order creates a fiction that he shall be deemed to be the owner of such goods from the time of their import till they are cleared through Customs. This fiction is created for the proper and effective implementation of the said order and the Import and Exports (Control) Act. The fiction, however, cannot be carried beyond that. It cannot be employed to attribute ownership of the imported goods to the importer even in a case where he abandons them, that is in a situation where he does not pay for and receive the documents of title. For such act of abandonment, action may be taken against him for suspension/cancellation of licence, and some other proceedings can also be taken against him. But certainly he cannot be treated as the owner of the goods even in such a case. Holding otherwise would place the exporter in a very difficult position; he loses the goods without receiving the payment and his only remedy is to sue the importer for the price of goods and for such damage as he may have suffered. This would not be conducive to international trade. [283 A-E]"

10. In the light of the above facts and circumstances there shall be a direction to release the goods to the petitioner under Section 110A of the Customs Act without any delay.

The writ petitions are allowed.