
(1992) 11 MAD CK 0070

In the Madras High Court

Case No : Writ Petition No. 13895 of 1992

Rainbow Colour

APPELLANT

Vs

The Collector of Customs and Another

RESPONDENT

Date of Decision : 11-11-1992

Acts Referred:

Customs Act, 1962 — Section 17, 18, 59, 59A, 61

Citation : (1993) 41 ECC 88

Hon'ble Judges : Srinivasan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Bakthavatsalam, J.—The writ petition is taken up with the consent of both parties. The petitioner purchased on high seas basis 5000 rolls of Konica Colour Negative Film for exporting the same. Even before the arrival of the goods, the foreign buyer had opened necessary export letter of credit and the same was also filed along with the bills of entry bearing Nos. 24362, 24363, 24364, 24365, 24366, 24368, 24369, 24372, 24377 and 24394 dated 16.7.1992. The petitioner wanted to warehouse the goods. The customs authorities also made an endorsement on the bills of entry that they are intended for re export as per public notice 18-ITC (PH) 9-CUS-(N.T) No. 10/92 dated 11.2.1992. (sic)

2. But, however the authority insisted upon the petitioner paying 50% of the duty assessed on the goods as per Section 59-A of the Customs Act. The petitioner has filed this writ petition challenging the same contending that his goods fall u/s 61(1)(a) of the Act and not u/s 61(1)(b) of the Act which alone are covered by u/s 59-A of the Act (sic).

3. The contention of the petitioner is well founded for these reasons. Section 61(1)(a) of the Act refers to several types of goods. Clause (5)[(v)?] of Sub-section 1(a) of [of Section 61] the Act refers to goods which the Central Government may, if it is satisfied that it is necessary or expedient so to do, by

notification in the Official Gazette, specify for the purpose of this clause. The Central Government has issued notification 10 of 1992 -- Cus (NT) dated 17.2.1992. Under that notification, goods meant for re-export are also stated to be goods for purposes of Sub-section (1)(a) of Section 61 of the Act. In this case, there can be no doubt whatever that the goods in question are meant for re-export as the petitioner has already filed the relevant letter of credit with the authorities opened by foreign buyer. The authorities have also made the entry on the bills of entry that the goods are meant for re-export within the meaning of the notification.

4. Section 59-A of the Act expressly refers to goods specified in Clause (b) Sub-section (1) of Section 61. Once it is found that the goods in question fall under Clause (a) of Sub-section (1) of Section 61 of the Act, they are excluded from the purview of Section 59-A of the Act. Those goods will necessarily fall u/s 59 of the Act. Under that section the importer of any goods falling under Clause (a) of Sub-section (1) of Section 61 of the Act which have been entered for warehousing and assessed to duty u/s 17 or Section 18 shall execute a bond in a sum equal to twice the amount of the duty assessed on such goods. Certain conditions were also prescribed in the section for the extension of the bond. Hence, I have no hesitation to hold that the goods in this case which are meant for re-export will fall under Sub-clause (a) of Sub-section (1) of Section 61 of the Act and consequently quaintly u/s 59 of the Act. Therefore, the respondents are not right in insisting upon payment of 50% of duty by the petitioner u/s 59-A of the Act. The section does not apply. Hence, the writ petition is allowed and the respondents are prevented hereby by issue of writ from insisting upon payment of 50% of the duty u/s 59-A of the Act, for warehousing and re-exporting the goods of the petitioner. It is open to the respondents to take action u/s 59 of the Act. No costs.