(2014) 10 MAD CK 0315

In the Madras High Court

Case No : Writ Petition No. 24417 of 2014

Raj Times APPELLANT

Vs

The Joint Commissioner of Customs (Diu) RESPONDENT

Date of Decision : 30-10-2014

Acts Referred:

Customs Act, 1962 — Section 110A, 111(m), 112(a), 114A, 124

Citation : (2014) 10 MAD CK 0315

Hon'ble Judges : T.S. Sivagnanam, J

Bench : Single Bench

Judgement

T.S. Sivagnanam, J.—In this writ petition, the petitioner seeks for issuance of a Writ of Certiorarified Mandamus, to quash the order dated 19.6.2014 issued by the third respondent under Section 110A of Customs Act 1962 (hereinafter shortly referred to as ''Act'').

2. The petitioner filed a Bill of Entry bearing No. 3016821 dated 17.8.2013 and sought for assessment and clearance of the consignment comprising different models of coin cell type watch batteries of Maxell Brand falling under CTH 85068090 in bulk from the overseas supplier at Singapore. The Bill of Entry was taken up for investigation by Docks Intelligence Unit (DIU) and the respondents did not accept the value declared by the petitioner. Therefore, a show cause notice under Section 124 and demand notice under section 28 of the Act was issued on 13.5.2014, calling upon the petitioner, to show cause as to why (i)Retail Sale Prices declared for the consignment in question should not be considered as a wrong declaration and should not be rejected and the declared goods should not be confiscated under section 111(m) of the Act; (ii)differential duty amounting to Rs. 4,77,092/- should not be demanded and recovered from the petitioner under Section 28(4) of the Act; and (iii)penalty should not be imposed on the petitioner under section 112(a) and under Section 114A of the Act. The petitioner submitted their explanation dated 2.6.2014 by way of reply to the show cause notice and also filed separate application, requesting for

provisional release of consignment imported vide Bill of Entry dated 17.8.2013 under section 110A of the Act. The said application was taken up for consideration and the third respondent Assistant Commissioner of Customs, Chennai, by the order dated 19.6.2014 permitted to release the consignment under section 110A of the Act, subject to the following conditions:

(a) Payment of duty as declared by the importer;

(b) 120% of the differential duty i.e., Rs. 4,77,092/- by way of 20% cash deposit and remaining 100% by way of Bank Guarantee;

(c) Execution of Bond for the full enhanced value. The petitioner, being aggrieved over the condition No. 2, is now before this court.

3. The writ petition was entertained and notice was ordered to the respondents. The learned standing counsel appearing for the respondents submitted that during the pendency of the writ petition, adjudication proceedings was taken up and the petitioner pursued their claim and the Joint Commissioner of Customs (Exports) has passed the order-in-original dated 1.7.2014, by which, the Retail Sale Prices of the consignment in question declared by the petitioner was declared as wrong declaration and the same was rejected; the Retail Sale Prices was redetermined; differential duty of Rs. 4,77,092/- was directed to be recovered from the petitioner; confiscation of goods having a total assessable value of Rs. 12,69,374/- was ordered, however, redeem the same on payment of redemption fine of Rs. 1,00,000/- under Section 125 of the Act; and penalty of Rs. 50,000/- levied on the petitioner company and Rs. 10,000/- on the Proprietor of the petitioner company was imposed under Section 112(a) of the Act.

4. The learned counsel for the petitioner submitted that as against the Order-in-Original dated 1.7.2014, the petitioner preferred an appeal before the Commissioner of Customs (Appeals) and the same is pending consideration. It is the contention of the petitioner that though the order-in-original is passed, the impugned order, which is challenged in this writ petition, would not merge with the order-in-original, as it is an independent proceeding.

5. Whereas, the learned standing counsel for the respondents would take a stand, in the light of the original-in-original dated 1.7.2014 that the impugned order dated 19.6.2014 for provisional release of the consignment in question, is not presently applicable to the petitioner, as the case has already been adjudicated and the order-in-original has been passed.

6. In my opinion, this question need not be gone into in this writ petition, since the matter has already been adjudicated and order has been passed and in fact, the petitioner complied with the order-in-original by paying differential duty. The said order would be more beneficial than the impugned order, which impose higher liability on the petitioner for provisional release of the consignment in question. Therefore, the question as to whether, the impugned order dated 19.6.2014 passed under section 110A of the Act would stand or merged with the

order-in-original dated 1.7.2014, need not be gone into at this stage and the same is left over.

7. Thus, considering the fact that the petitioner preferred an appeal against the order-in-original dated 1.7.2014 and taking note of the only allegation made against the petitioner is that the petitioner made wrong declaration of assessable value of the consignment in question and therefore, the authority concerned has enhanced the assessable value of the goods to Rs. 12,69,374/-, the correctness of the order-in-original is subject to the outcome of the appeal, pending consideration by the Commissioner of Customs (Appeals). As the consignment in question are not prohibited or restricted items, this Court is of the view that the petitioner should be granted permission to clear the consignment in question, subject to the following conditions:

(i) the petitioner shall pay duty as per the value declared by them, which according to the petitioner, was already paid;

(ii) the petitioner shall pay the differential duty of Rs. 4,77,092/-;

(iii) the payment of redemption fine of Rs. 1,00,000/- and penalty of Rs. 60,000/- (Rs. 50,000/- levied on the company and Rs. 10,000/- on the proprietor of the company) shall remain stayed till the disposal of the appeal filed against the order-in-original dated 1.7.2014, before the Commissioner of Customs (appeals), subject to the condition that the petitioner shall execute a bond for the amount of redemption fine and penalty imposed, to the satisfaction of the respondents.

8. In the event of the petitioner complying with the above conditions, the consignment in question shall be released forth with by the respondents. It is made clear that the payment made by the petitioner shall be without prejudice to the rights and contentions of the petitioner in the appeal pending before the Commissioner of Customs (Appeals).

9. At this stage, the learned counsel for the petitioner submitted that a liberty may be given to the petitioner to file separate application under Regulation 6(l) of Handling of Cargo in Customs Area Regulation, 2009 for waiver of redemption charged. Since the scope of the writ petition is quite different, no such direction could be issued. If such remedy is available to the petitioner under the provisions of the relevant Regulation, it is open to the petitioner to avail such remedy.

10. With the above directions and observation, the writ petition is disposed of. No costs.

