(2004) 03 CAL CK 0021

In the Calcutta High Court

Case No : Writ Petition No. 513 of 2000

Rajesh Sharma and Another APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 26-03-2004

Acts Referred:

Customs Act, 1962 — Section 108, 110, 124
Penal Code, 1860 (IPC) — Section 174, 175

Citation : (2004) 3 CHN 604 : (2004) 175 ELT 82

Hon'ble Judges : Soumitra Pal, J

Bench : Single Bench

Advocate : Ramesh Chowdhury, for the Appellant;Prantosh Mukherjee, for the Respondent

Judgement

Soumitra Pal, J.—The Court: The petitioner is engaged in the business of export and import and had been allotted an importer code number by the Joint Director General of Foreign Trade, Guahati, Assam. The petitioner, it is contended in the writ petition, imported a consignment of decorative articles directly from a manufacturer at Italy. The said consignment of articles arrived at the port of Calcutta on February 24, 1999 and the bill of entry for home consumption was filed on behalf of the petitioners by the clearing agent on 4th March, 1999. The customs authorities by an order dated 4th March, 1999 on the said bill of entry not only directed for examination of the goods but also directed the goods to be detained without assigning any reason and the said goods are lying seized though no formal notice of such purported seizure u/s 110 of the Customs Act, hereunder referred to as the Act, was ever issued. The said order dated 4th March, 1999 was also recorded in the copy of the bill of entry of the petitioners. On 16th March the customs authorities issued an Appraiser''s Query calling for submitting copy of the invoice of the manufacturer with justification on the coverage of licence. It is contended that the petitioner submitted all the relevant documents. Though the respondents examined the said goods and drew examples but neglected to release the consignment without assigning any reason. It has been stated that on 29th July, 1999 and on 10th August, 1999 the Appraiser of Revenue Intelligence issued summonses u/s 108 of the Act to the petitioner No. 2 and called upon the petitioners to give evidence and produce documents relating to the importation of the said articles. The petitioners, it has been contended, attended the summonses and also produced documents and gave evidence in complains to the said summonses and though more than six months have passed since the purported seizure, the respondent No. 2 neither released the goods nor issued any show cause notice to the petitioner u/s 110 of the said Act. The petitioners have stated that such seizure beyond a period of six months from the said seizure in the absence of the show cause notice is illegal, wrongful and not permissible in law. The petitioners, it is stated repeatedly, approached the respondent No. 2 for release of the goods but without success. Hence, the writ petition. Pursuant to the order of the Court, affidavits have been exchanged.

2. The prayer in the writ petition which is relevant is as follows:

a) A writ of and/or in the nature of mandamus directing and commanding the respondents and each of them to refrain from causing any delay or further delay in the matter of release of the consignment of the petitioners containing decorative items any further in any manner whatsoever.

3. Mr. Ramesh Chowdhury appearing on behalf of the writ petitioner, submitted since no notice had been issued u/s 124 of the Act within the time prescribed u/s 110(2) of the Act and the time having not been extended under the proviso to Section 110 of the Act, the detention of the articles is without jurisdiction and illegal. Reliance was placed on the judgments of the Supreme Court in Shanti Lal Mehta v. Union of India and Ors., reported in 1983 ELT 1715 SC SC and Gian Chand and Ors. v. State of Punjab, reported in 1983 ELT 1365 SC to support his contention. It was further submitted that the transacted value of the articles is sought to be rejected on the basis of the catalogue price. Mere quotation of the price in the catalogue is not the value of the transacted goods. What is required to be seen is whether the documents are genuine or not and in the instant case, the customs authorities are not saying that they are not genuine. Reliance was placed on the judgment of the Apex Court in the case of Eicher Traders Ltd. v. Commissioner of Customs, Mumbai, reported in 2000(4) RLT 621 SC.

4. Mr. Prantosh Mukherjee appearing on behalf of the respondents raised a preliminary issue that as the Union of India has not been properly impleaded in the writ petition and as there is no authorized signatory on behalf of the respondent No. 2 the writ petition should be dismissed. Further submission was made that as the petitioner failed and neglected to appear before the Appraiser, Directorate of Revenue Intelligence, in spite of the repeated summonses for giving evidence or producing the documents or explaining the position, the investigation has been delayed for no fault of the department.

5. Mr. Chowdhury in reply submitted that though the petitioner did not appear

pursuant to the summonses dated 29.7.1999 and 10.8.1999 issued u/s 108 of the Act, the petitioner furnished copies of certain documents along with the letter dated 12.8.99 which were sufficient for compliance of the summonses by the authorities. It was submitted that though the petitioners did not appear pursuant to the summonses, the respondents, it appeared were satisfied as it did not issue further summonses. Submission was made that letters dated 9.8.1999 and 12.8.1999 are sufficient for compliance of the summonses issued by the authorities. Mr. Chowdhury submitted the respondents could have issued a notice u/s 28 of the said Act, duty could have been paid and the goods could have been released but unfortunately the said articles have not been released which is illegal and the investigation is mala fide. Prayer was made for release of the goods on payment of duty.

6. After hearing the submissions of the petitioners and the respondents, I find no merit in the arguments put forward on behalf of the petitioners. It is a fact that summonses were issued u/s 108 of the Act on 29.7.1999 and 10.8.1999 by the Directorate of Revenue Intelligence for making enquiries in connection with the said importation of decorative articles and it was considered necessary for the attendance of the petitioner before the said Directorate to give evidence and/or to produce documents or things. It was intimated in the said summonses that non-compliance with the summonses is an offence under Sections 174/175 of the Indian Penal Code, 1860. The petitioner after receiving the summons dated 29.7.1999 sought for time and thereafter, by a letter dated 12th August, 1999, being Annexure ''D'' to the writ petition, enclosed copy of the invoice, copies of packaging list and copies of the Customs Appraising Section. The submissions of Mr. Chowdhury that the letter dated 9.8.1999 and particularly the letter dated 12th August, 1999 are sufficient for compliance of the said summonses, in my view, are not acceptable. When summonses were issued directing attendance of the petitioner, the petitioner was bound to attend on the date as mentioned in the said summonses and failure to comply with the same is not permissible in law. Issuing the letter dated 12th August, 1999 does not absolve the petitioner from not complying with the summonses issued u/s 108 of the said Act. The petitioner should have appeared before the authorities on the date mentioned in the summonses.

7. In the result, the writ petition fails. In the facts and circumstances of the case, there shall be no order as to costs.

8. As prayed for, stay of operation of the order is granted for a period of two weeks from date.

9. If application is made for urgent xerox certified copy, such should be given within seven days from the date of such application.

Soumitra Pal, J.

