(2016) 07 DEL CK 0132

In the Delhi High Court

Case No : Writ Petition (C) No. 6201 of 2016 and CM Appl. No. 25400 of 2016 (for stay)

Rajesh Trehan APPELLANT

Vs

Principal Commissioner of Customs RESPONDENT

Date of Decision : 26-07-2016

Acts Referred:

Citation : (2016) 341 ELT 569

Hon'ble Judges : Dr. S. Muralidhar and Najmi Waziri, JJ.

Bench : Division Bench

Advocate : Shri. Mukesh Anand, Advocate, for the Petitioner; S/Shri. Pradeep Kumar Rai, Senior Standing Counsel, Deepan Anand and Satish Aggarwala, Advocates, for the Respondent

Final Decision : Disposed Off

Judgement

1. This is the second round of litigation emanating from an earlier order dated 29th February, 2016 passed by this Court in WP(C) No. 1775/2016, filed by this very petitioner Rajesh Trehan [2016 (336) E.L.T. 37 (Del.)].

2. The facts in brief are that the petitioner opened a proprietary concern M/s. Rajesh Trehan in August, 2014 for the purpose of trading in LED TV panels and spare parts. The said proprietary concern is stated to have a certificate of registration under the Delhi Value Added Tax Act, 2004. The petitioner claims that the LED TV panels and spare parts were purchased from various importers against valid bills and C-Forms. It is stated that the premises of the petitioner were searched by the Directorate of Revenue Intelligence (''DRI'') on 27-28th September, 2014 and a Panchnama of the seized goods was prepared. The seized goods were handed over to the petitioner on Superdari. A copy of the Superdaginama has been enclosed with the petition.

3. Inter alia, for the purposes of the present order, what is relevant is that the petitioner undertook to keep the seized goods handed over to him "intact and in

the same condition as they are now" and produce them whenever called upon to do so by the competent authority of the Customs/DRI. Annexure A to the panchnama which lists out the seized goods reads as under :

S. No.

Model No.

Size

Nos.

Complete/ Incomplete

1

UA48H6400AK

48 inches

72

Complete

2

UA40H5100AR

40 inches

1

Complete

3

UA32H5100AR

32 inches

1

Complete

4

UA32H4100AR

32 inches

309

Complete

5

UA32FH4003R

32 inches

443

Complete

6

RF Cards for TVs

-

102

Spare Parts

7

Power Supply Unit for TVs

-

102

Spare Parts

8

One set of Speaker (Two pieces each set)

-

102

Spare Parts

4. A show cause notice (''SCN'') was issued to the petitioner on 26th September, 2015 by the DRI wherein, inter alia, it was stated that the imported goods declared as LED TV panels did not have the essential character of such complete LED TVs and that the benefit of duty exemption was wrongly claimed with respect to the Bills of Entry (B/Es) under which the said LED TV panels were imported. There were allegations of mis-declaration and undervaluation. The petitioner was called upon to pay the differential customs duty that was evaded and short-paid together with interest and penalty.

5. What is relevant for the purposes of the present petition is Para 20 of the SCN, which reads as under :

"20. Photocopies of the documents relied upon in this show cause notice are listed in Annexure-AA to this show cause notice and are also enclosed herewith. It may be noted that all the documents and annexures enclosed with this show cause notice are an integral part of this thereof...."

6. The petitioner has not enclosed with the copy of the SCN the aforementioned Annexure-AA since according to the petitioner it was not supplied to him. The

Court has been shown the original SCN as available in the file of the DRI with Annexure-AA is enclosed. It is titled : "Relied upon documents to the SCN No. (51/2015), dated 26-9-2015". While the main text of the SCN concludes at page 53, and the bottom of the page shows "Page 53 of 54", Annexure-AA itself does not mention page No. 54. Be that as it may, what is evident is that in terms of Annexure-AA there are 31 Relied Upon Documents (''RUDs'') to the SCN. However, as pointed out by Mr. Mukesh Anand, learned counsel for the petitioner, the text of the SCN itself refers to only 19 RUDs. The 19th RUD is mentioned in Para 7.1 of the SCN. Thereafter there is no reference to any other RUD. It appears that the petitioner proceeded on the basis that there were only 19 RUDs referred to in the main text of the SCN. The petitioner had been writing to the adjudicating authority, i.e., the Principal Commissioner (Customs) for copies of the RUDs. The petitioner has also been seeking provisional release of the seized goods pending the adjudication as well as a re-examination of the seized goods.

7. By an order dated 29th April, 2015 in W.P. (C) No. 4225 of 2015 filed by the petitioner, a learned Single Judge of this Court, inter alia, observed that the petitioner''s prayer for re-examination of the goods will be considered by the DRI and appropriate orders will be passed. When no such order was passed, the petitioner filed a Contempt Case No. 614/2015 in which an order was passed on 5th August, 2015 noting, inter alia, that the petitioner had no further clarification or documents to submit. The contempt petition was disposed of with a direction to the DRI to decide the petitioner''s application for re-examination of the goods within a period of two weeks without seeking any further clarification or documents. Subsequently, the DRI passed a detailed order dated 18/19th August, 2015 rejecting the petitioner''s plea for re-examination of the seized goods for the following reasons :

"....(i) Supply of fabricated documents by you in support of purchase of the aforesaid goods.

(ii) Non-supply of documents showing sale of goods, which were imported by you in past.

(iii) Failure to provide/produce any documentary evidence/details challenging the contents or sanctity of the Panchnama...."

8. The petitioner''s request for provisional release of the goods was disposed of by the Principal Commissioner, Customs (Import) by an order dated 11th February, 2016 by imposing a set of conditions which, inter alia, required the petitioner to pay 100% of the differential duty, execute a bond equivalent to 100% of the value of the seized goods, furnish a bank guarantee equivalent to 30% of the differential duty, furnish of an undertaking that the importer will not dispute/challenge the description and quantity of the seized goods and that the importer will not use or dispose of the complete LED TVs either by sale or gift, etc., without the approval of the Department of Electronics and Information Technology and Bureau of Indian Standards.

9. The petitioner then filed WP (C) No. 1775/2016 in this Court, challenging the order dated 11th February, 2016 passed by the Principal Commissioner of Customs granting conditional provisional release of the goods. The petitioner also prayed for re-examination of the goods. When said writ petition was heard, learned counsel for the petitioner made a submission that "prayer made in this petition is being confined to seeking provisional release of the goods". The Court, in Para 5 of the order dated 29th February, 2016, took note of the fact that the petitioner had raised a dispute regarding identity of the goods and demanded re-examination which had been rejected by the order dated 18th August, 2015 by the DRI. The Court was not inclined to modify the conditions for provisional release of the goods since a serious dispute had been raised by the respondents regarding genuineness of the documents produced by the petitioner and this was crystallised in the SCN which was pending adjudication. The Court, however, directed the Principal Commissioner (Adjudication) to conclude the adjudication proceedings and to pass an adjudication order "not later than four months from today".

10. On 28th April, 2016, the petitioner wrote a letter to the Adjudicating Officer (AO) requesting for the annexures to the SCN to enable him to file a reply. According to the petitioner, this was the first date of hearing in the adjudicating proceedings that had been fixed by the AO after the order dated 29th February, 2016 passed by this Court. In response to the above letter, the AO wrote to the petitioner on 12th May, 2016 informing him that the SCN was issued by the DRI and, therefore, the petitioner should collect the documents from the DRI. On 2nd June, 2016 another letter was written by the AO in continuation of the letter dated 12th May, 2016 enclosing copy of the RUDs of the SCN that was received from the DRI on 2nd June, 2016. The petitioner was now asked to submit his reply at the earliest.

11. On 7th June, 2016 the petitioner again wrote to the AO stating that on 6th June, 2016 the petitioner had been handed over incomplete RUDs 1 to 17 and not RUDs 18 and 19. The petitioner pointed out that in the absence of the complete RUDs, it would not be possible for the petitioner to submit a detailed and appropriate reply. A separate letter was addressed by the petitioner on 7th June, 2016 to the DRI to the same effect. Another detailed representation was made by the counsel for the petitioner to both the Customs and the DRI on 13th June, 2016 seeking copies of the RUDs 18 and 19 that had still not been supplied. On 17th June, 2016 the AO enclosed "rest of Replied (sic) Upon Documents (RUDs) i.e., RUD Nos. 18 and 19 of the subject show cause notice received from DRI (DZU), New Delhi on 17-6-2016".

12. What, therefore, transpires is that it was only on 17th June, 2016 that the petitioner was finally supplied "remaining two RUDs", i.e., RUDs 18 and 19. However, the DRI on 30th June, 2016 addressed a letter to the petitioner stating, inter alia, as under :

"??. Please find enclosed a set of RUD''s No. 01 to 31 to the above-mentioned

SCN No. 51/2015, dated 26-9-2015.

2. In this regard, it is also informed that RUD''s No. 01 to 17 were earlier submitted to the adjudicating authority on 2-6-2016 and RUD''s No. 18 to 31 were again submitted to the adjudicating authority on 17-6-2016 which were immediately provided to the noticees including yourself as intimated to this office by the adjudicating authority vide their letter C.No. VIII/ICD/TKD/ 6/Adj./Imp./ Pr.Comm./02/2016...."

13. The above letter of the DRI for the first time mentioned that there were 31 RUDs. It claimed that earlier 17 RUDs had been supplied on 17th June, 2016 and that RUDs 18 to 31 "...were again submitted to the adjudicating authority on 17-6-2016??.". However, the fact remains that till then the AO had supplied to the petitioner only 19 RUDs. With the petitioner knowing of the 31 RUDs only on 30th June, 2016, it is obvious that the time limit set by this Court by order dated 29th April, 2016 to complete the adjudication proceedings within a period of four months thereafter was not going to be complied with. It is in these circumstances that the present petition was again filed by the petitioner again seeking for quashing of the SCN for unconditional release of the goods seized through the Panchnama dated 28th September, 2014.

14. In response to the notice issued in this petition on 21st July, 2016 Mr. Satish Aggarwala appeared on behalf of the DRI and Mr. Pramod Kumar Rai on behalf of the Customs. Today a counter affidavit by the DRI has been handed over in Court by Mr. Aggarwala. It is not in dispute that although the SCN refers to Annexure-AA, the body of the SCN itself does not refer to RUDs beyond RUD 19. Further, although Annexure-AA to the SCN refers to 31 RUDs, the AO furnished the petitioner with only 19 RUDs. It is only today in Court that a complete set of the 31 RUDs has been handed over by Mr. Aggarwala to the learned counsel for the petitioner.

15. In light of the fact that the 31 RUDs have been supplied only today to the petitioner, the time for completion of the adjudication proceedings has to be extended. The Court directs that within a period of two months from today, the adjudication proceedings should be completed and the adjudication order should be passed without any further postponement with the full cooperation of the petitioner.

16. Learned counsel for the petitioner reiterated the plea for re-examination of the goods. This was vehemently opposed by Mr. Aggarwala, who pointed out that this prayer had been given up when the order dated 29th February, 2016 was passed by the Court in WP(C) No. 1775/2016. Mr. Aggarwala also referred to an order dated 23rd January, 2013 passed by the Supreme Court in Crl. Appeal No. 1640/2010 (Thana Singh v. Central Bureau of Narcotics) to urge that the re-testing and re-sampling should ordinarily not be permitted unless there were exceptional circumstances.

17. In the first place, the Court notices that the observation in Para 23 of the

above order of the Supreme Court was made in a case arising under the Narcotic Drugs and Psychotropic Substances Act, 1985. It was in the specific context of the re-testing and re-sampling of the seized consignments of drugs. Clearly the context in which the re-examination of goods is being sought in the present case, is very different. Secondly, the list of the seized goods has already been enclosed with the Panchnama with an undertaking that the petitioner shall keep the goods intact. All that the petitioner is seeking is a re-examination of the seized goods for a proper and detailed inventory to be drawn up.

18. The Court is unable to appreciate how the re-examination of the goods is going to prejudice the respondents particularly if it takes place within a reasonable time-frame without delaying the completion of the adjudication. Further, it is not going to ipso facto result in release of the goods in favour of the petitioner. The goods will continue in the petitioner''s Superdari subject to the conditions already in place till the completion of the adjudication. In the event the DRI and/or Customs find that the goods upon re-examination have in any way been tampered or do not match the description as set out in the Panchnama, then they will take further appropriate steps in accordance with law, as in that event the petitioner would not have adhered to the undertaking given at the time the goods were handed over to him on Superdari.

19. The Court directs that within a period of two weeks from today, and in the presence of a representative of the petitioner and one representative each of the DRI and the Customs, a re-examination will take place of the seized goods which are in the custody of the petitioner on Superdari. A mutually agreed date will be determined in consultation with each of the parties through their respective counsel. The re-examination shall be completed within a period of two weeks from today. A detailed inventory will be drawn up. The cost of engaging additional help for the purposes of preparing the inventory will be borne by the petitioner. The inventory so drawn up will form part of the adjudication record and can be relied upon by the petitioner as well as the DRI and the Customs in the adjudication proceedings.

20. It is made clear that the above directions are without prejudice to the rights and contentions of the parties in the adjudication proceedings. This is not intended to create any equity or rights in favour of any of the parties and will not result in modification of the earlier order of provisional release of the goods in favour of the petitioner.

21. The writ petition and the application are disposed of with the aforesaid directions.

22. Order dasti.

