(2006) 11 MAD CK 0019

In the Madras High Court

Case No : Writ Petition No''s. 39681 to 39683 of 2006 and MP. No. 1 of 2006

Rasi Electrodes APPELLANT

Vs

The Directorate General of Central Excise Intelligence, The Assistant Director, Mr. Sankaranarayanan, the Senior Intelligence Officer, Directorate General of Central Excise Intelligence and The Commissioner of Customs (Imports) RESPONDENT

Date of Decision : 03-11-2006

Acts Referred:

Citation : (2006) 113 ECC 225 : (2006) 139 ECR 225 : (2007) 209 ELT 20

Hon'ble Judges : K. Raviraja Pandian, J

Bench : Single Bench

Advocate : Habibullah Basha, SC for C. Manishankar, for the Appellant; V.T. Gopalan, A.S.G., for the Respondent

Judgement

K. Raviraja Pandian, J.—I have heard Mr. Habibullah Basha, learned Senior Counsel for the petitioner and Mr. V.T. Gopalan, learned

Additional Solicitor General for the respondents. By consent, the writ petitions are taken up for final disposal, as the relief sought for in MP. No. 1

of 2006 and in the main writ petitions is one and the same.

2. The petitioner has been importing MS (mild steel) wires of electrode quality copper coated to be sold in the open market and as such, they are

importing continuously for the past several years. The goods have been classified under customs tariff item No. 7217.9092 and approved by the

Customs Department and 5% duty was paid. In so far as the goods, which are the subject matter of these writ petitions, when the bills of entry

were submitted, the officials of the respondent authorities assessed the goods under customs tariff item No. 7217.9092 after scientifically examining the electrodes as to the content of the silicon therein and cleared the same with 5% duty.

3. It is the case of the petitioner that the third respondent along with some other officers of the first respondent visited the petitioner''s factory

premises, inspected various records kept in the factory, detained the duty paid, cleared goods and instructed the petitioner not to remove or deal

with the goods detained by them by their letter dated 29.6.2006. On the same day, they searched the petitioner''s residential premises and made

the petitioner to pay Rs. 6.25 lakhs, as the same was found in the petitioner''s residence. However, the same was not reflected in the mahazar

drawn in the office of the first respondent, however, made to draw a challan as the said amount was paid towards past liability. The officers of the

second and third respondents visited the factory on 4.8.2006 and seized the goods worth about Rs. 36 lakhs for a differential customs duty to an

extent of Rs. 1,25,000/- under mahazar.

4. Aggrieved by the act of seizure and recovery of amount for the past liability by the officials, by letters dated 1.7.2006 and 10.8.2006, the

petitioner requested the second respondent to issue directions for release of the goods. The second respondent, by his letter dated 11.8.2006,

directed the petitioner to approach the customs officials for provisional release of goods. The petitioner also relies upon two or more

correspondence between the petitioner and the respondents for the release of goods. The petitioner approached all the authorities for clearance of

the goods by contending that earlier the respondents themselves cleared the goods after scientifically examining the samples drawn from the goods

seized and as such, there is no misclassification and even otherwise, the misclassification cannot be attributed to the petitioner alone. Even after

finding that the silicon content is over and above 0.6% in certain samples, the respondents cleared the goods. The petitioner further requested the

respondents to clear the goods on the petitioner safeguarding the interests of the Department by furnishing whatever security the Department

wants. However, the request of the petitioner has not yielded any result. As the goods have not been released, the petitioner filed these writ

petitions with the above prayers.

5. When the matter is pending before this Court, the second respondent issued a

show cause notice dated 25.10.2006 calling upon the petitioner

to show cause as to certain violations on the part of the petitioner in clearing the goods and there seemed to be a proposal for confiscation of the

goods also. That show cause notice has been now placed before this Court and argument has also been advanced. I have heard the learned

Counsel on either side on this also and perused the materials on record.

6. As seen from the materials placed before this Court, after the seizure of goods, on the petitioner writing letters to the higher ups, the stand of the

respondents was that the petitioner can get the goods cleared on payment of differential duty or on provisional clearance from the authorities

concerned. In the said show cause notice now placed before this Court, in addition to the infraction in clearing the goods, for mis-declaration, a

proposal for imposition of fine has been added by confiscating the goods. That is the only variance and additional factor in view of the issuance of

the said show cause notice.

7. While considering the totality of the circumstances of the case, the goods imported by the petitioner are not contraband or prohibited goods, on

the contrary, the goods have been allowed to be imported by the respondents and the petitioner is importing the same for years together. The only

dispute is with regard to the rate of duty. For that purpose, the said show cause notice has been issued. In the above said backdrops, this Court is

of the view that the action to be taken for confiscation as stated in the said show cause notice would not detain this Court to pass orders in these

writ petitions. Even assuming for a moment ultimately if an order of of confiscation is passed after adjudication, a redemption fine can be imposed

in lieu of confiscation and hence, the goods can be released while safeguarding the interests of the Department as well as the petitioner.

8. Respondents 2 and 3 herein - the Assistant Director and the Senior Intelligence Officer of the Directorate General of Central Excise Intelligence

are directed to release the goods on the petitioner paying differential duty as per the stand taken and also as per the show cause notice dated

25.10.2006 issued by second respondent. The petitioner is further directed to furnish a personal bond to the value of the goods, which are the

subject matter of these writ petitions to the satisfaction of the second respondent. The respondents are permitted to draw samples from the goods, which were seized, if felt necessary, for further chemical examination during the course of adjudication process. As regards the sum of Rs.

6,25,000/- (Rupees six lakhs and twenty five thousand only), which is the subject matter of the writ petition in WP. No. 39683 of 2006, in which,

refund of the same is sought for, the respondents are directed to take the same into credit for the petitioner''s permanent ledger account. The

release of goods has to be done on the petitioner complying with the above two conditions.

9. The writ petitions are disposed of with the above directions. NO costs. Consequently, the above MP is dismissed.

