

(2014) 09 KAR CK 0078

In the Karnataka High Court

Case No : Writ Petition No. 25581/2014 C/W W.P. Nos. 9004/2014 and
16638/2014 (GM-RES)

Ratnagiri Impex Pvt. Ltd.

APPELLANT

Vs

The Commissioner of Customs

RESPONDENT

Date of Decision : 02-09-2014

Acts Referred:

Citation : (2015) 323 ELT 301

Hon'ble Judges : A.N. Venugopal Gowda, J

Bench : Single Bench

Advocate : Sham Koundinya A.S., Advocate for the Appellant; P.S. Dinesh Kumar, Advocate for the Respondent

Judgement

A.N. Venugopal Gowda, J.—W.P. 9004/2014 was filed to quash provisional release order dated 23.01.2014 and the condition imposing furnishing of bank guarantee for 50% of the bond amount and also the release of the bank guarantee which the petitioner has furnished under protest.

W.P. 16638/2014 was filed to quash two seizure mahazars dated 19.03.2014 and to direct the release of the goods seized

W.P. 25581/2014 was filed to quash the provisional release order dated 23.05.2014.

2. Petitioner imported on 24.12.2013 under BOEE No. 4172443 goods described as "shoulder type power weeder AHM200" (for agricultural use) by classifying them under customs tariff heading 8432 8090. On 01.01.2014, 324 sets of imported items worth Rs. 40.58 Lakhs was seized under the mahazar. Petitioner requested, on 02.01.2014, provisional release, pending adjudication and offered to pay differential duty under protest. Additional Commissioner of Customs, on 13.01.2014, ordered the release of goods after obtaining (i) bond for value of goods (ii) payment of differential duty and (iii) submission of cash security/bank guarantee for 50% of value of goods. Petitioner executed a bond on 22.01.2014

for Rs. 40.58 Lakhs and furnished bank guarantee for Rs. 20.29 Lakhs under protest. Petitioner deposited Rs. 7,48,319/- being the differential duty. The goods were released on 23.01.2014.

3. On 19.03.2014, godowns of the petitioner at Kumbalagodu and Hejjala were searched and 1335 and 9713 numbers of brush cutters were seized under two mahazars. Challenging the said action and for release of the goods seized, W.P. 16638/2014 was filed.

4. A show cause notice dated 05.05.2014 was issued and served on the petitioner by the respondents. Advocate for the petitioner, Sri Hari Radhakrishnan, sent e-mail on 10.05.2014, to the Commissioner for Customs, requesting the provisional release of the goods. On 23.05.2014, 1st respondent ordered for provisional release subject to (i) execution of bond for full value and (ii) furnishing of bank guarantee for Rs. 1.5 Crores. Questioning the said order, W.P. 25581/2014 was filed on 05.06.2014.

5. Petitioner has filed reply on 07.08.2014 to the show cause notice dated 05.05.2014 issued and served on it. The matter is pending before the adjudicating authority.

6. Having heard learned advocates on both sides and keeping in view the facts and circumstances of the case and since adjudication with regard to the seizure effected is required to take place, which may consume certain time, I deem it just to direct the respondents to release the seized goods subject to fulfillment of conditions enumerated herein.

Writ petitions are disposed of and the respondents are directed to release the seized goods subject to (i) the execution of bond for the value of the seized goods and (ii) furnishing bank guarantee for Rupees One Crore, in three instalments. The petitioner shall execute the bond for the value of the entire goods and furnish bank guarantee for Rs. 50,00,000/- on or before 15.09.2014. Simultaneously, respondents shall release 50% of the seized goods.

Petitioner shall furnish bank guarantee for further sum of Rs. 25,00,000/- on or before 17.10.2014, with which the respondents shall release goods to the extent of the bank guarantee furnished. Upon furnishing of further bank guarantee for the value of Rs. 25,00,000/-, the remaining goods shall be released to the petitioner.

It is open to the petitioner to raise all objections before the adjudicating authority, who shall consider the same and pass orders.

It is made clear that the objections raised with regard to the seizure and the release obtained by complying with the conditions imposed herein, shall be subject to the final outcome of the proceedings before the adjudicating authority.

The differential duty paid by executing bond and the security furnished pursuant to the order dated 13.01.2014 passed by the Addl. Commissioner of Customs,

being under protest, the rights of the petitioner shall be subject to the final order that may be passed by the adjudicating authority.

The grounds raised in these writ petitions relating to the impugned proceedings are left open. It is also made clear that, in case, the petitioner is aggrieved by the order that may be passed by the adjudicating authority, petitioner is at liberty to avail remedy in accordance with law.

No costs.