(2015) 10 MAD CK 0087

In the Madras High Court

Case No : W.P. No. 29291 of 2015 and M.P. No. 1 of 2015

R.K. Enterprises — APPELLANT

Vs

The Commissioner of Customs and Others — RESPONDENT

Date of Decision : 12-10-2015

Acts Referred:

Citation : (2016) 331 ELT 393

Hon'ble Judges : R. Mahadevan, J.

Bench : Single Bench

Advocate : A.K. Jayaraj, for the Appellant; A.P. Srinivas, Standing Counsel, for the Respondent

Judgement

R. Mahadevan, J.—The writ petition has been filed to release the goods viz., 1328 Cartons of Garment Packing Materials and Tailoring Materials Viz., Seal Tag, Shirt Pin, Shirt Clip, metal Ring Adjuster, Scissor, Thread cutter, Hand stitch button, metal button and plastic button, imported vide Bill of Entry No. 2174989, dated 07.08.2015, after collecting the central duty and Additional Duty on the Excess Goods proportionately as per the value assessed by the proper Officer under the Customs Act.

2. Learned counsel for the petitioner submitted that the petitioner had imported 1172 cartons of garment packing materials and tailoring materials viz., Seal Tag, Shirt Pin, Shirt Clip, metal Ring Adjuster, Scissor, Thread cutter, Hand stitch button, metal button and plastic button from China and filed Bill of Entry No. 2174989, dated 07.08.2015 and claimed for clearance of the goods for Home consumption and declared the value of the goods totally at USD 15,236.70 for 1172 cartons and furnished invoice from M/S. Yi Wu Red Trade Co. Ltd., China, vide Invoice dated 23.07.2015. He further submitted that thereafter, the value of the goods were verified, enhanced and assessed the Bill of Entry by the proper officer and directed to pay duty. Thereafter, the SIIB Officers have examined the goods and found that 1328 cartons were found on examination, the petitioner declared only 1172 cartons and also alleged approximately 130 cartons of goods

were found excess more than declared in the invoice. When the petitioner had contacted the exporter, the exporter had informed them accepting their mistake on their part in sending the excess goods and also stated that their load man had wrongly shipped the above goods, the petitioner after receiving the above information from the supplier had informed to the Customs Department about the same. Thereafter, the petitioner had requested the respondents to release the total quantity of 1328 cartons of the goods provisionally after collecting additional duty on the excess goods proportionately as per the value assessed by the Proper Officer under the Customs Act, but till date not released the goods. Hence, the learned counsel for the petitioner seeks appropriate direction for release of goods.

3. Learned counsel for the petitioner brought to the notice of this Court a decision in W.P. No. 21194 of 2014, dated 08.10.2014, which reads as follows:

"6. The learned counsel for the petitioner, in support of his submissions placed reliance on the following decisions:--

(i) Review Application No. 89 of 2011 in W.A. No. 582 of 2011 and, dated 25.4.2011 [Commissioner of Customs (Airports), Chennai and others v. T. Elavarasan];

(ii) W.A.(MD)548 of 2012, dated 14.8.2012 (The Commissioner of Customs, Tuticorin v. Empire Exports); and

(iii) W.A. No. 758 of 2014, dated 20.6.2014 (The Chief Commissioner of Customs and others M/s. Sri Laxmi Vijay Saw Mill, Bangalore and another)

By referring all the above decisions, the learned counsel for the petitioner submitted that in all these cases, provisional release has been granted even after the adjudication proceedings have commenced. Further it is stated that the Division Bench of this court in W.A. No. 582 of 2011, dated 25.4.2011 had directed to release of the goods subject to certain conditions. Further it is stated in W.A.(MD)548 of 2012 (Cited supra), the Division Bench of this court directed the importer therein to pay the duty as declared by them and 30% of the differential duty of admitted value by the petitioner and the value fixed by the Department and to execute a personal bond for the balance amount of 70% differential duty to the satisfaction of the concerned officer.

7. The learned counsel for the respondents 2 and 3 vehemently contended that directions should be issued to the authorities to provisionally assess the goods within the stipulated period and the authority shall consider such a request in accordance with the regulations referred above.

8. After hearing the learned counsel for the parties and perusing the materials placed on record, while considering the prayer for provisional release, this court have taken a view that the interest of revenue has to be protected and at the same time interest of the importer should also be looked into, for which purpose, the following factors are to be considered, viz.,:--

(i) whether the goods are prohibitory goods;

(ii) whether the goods require specific licence; and

(iii) whether the goods are contra band.

If these three factors are not available in a case which comes up for consideration, then, this court has to safeguard the interest of the revenue and the interest of the importer can be considered by imposing conditions. In the present case, admittedly, the import is not hit by any of the above factors. The only issue to be considered in the present writ petition is as to whether the goods declared by the petitioner is lower than the market value with an intention to evade payment of duty."

4. Heard the learned counsel appearing on behalf of the petitioner as well as the learned standing counsel appearing on behalf of the respondents.

5. The decision above referred is squarely applicable to the facts in this case also. Hence, in the light of the above, similar direction is to be given to give quietus to this issue. Accordingly, there shall be a direction that the differential duty is to be assessed by the authorities and on such assessment and intimation, the same shall be paid by the petitioner along with actual duty payable. On such payment, the goods shall be released forthwith leaving the other issues open to the respondents to proceed in accordance with law. The assessment of differential duty shall be completed by the respondent concerned within a period of one week from the date of receipt of a copy of this order.

6. The Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

