(2016) 08 P&H CK 0314

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 6098 of 2016 (O&M)

RV General Trading APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 31-08-2016

Acts Referred:

Citation : (2016) 341 ELT 220

Hon'ble Judges : Rajesh Bindal and Harinder Singh Sidhu, JJ.

Bench : Division Bench

Advocate : Shri Saurabh Kapoor, Advocate, for the Petitioner; Shri Saurabh Goel, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Rajesh Bindal, J. - The petitioner has filed the present petition impugning the order dated 18-3-2016 (Annexure P-1) whereby the value of goods imported by the petitioner was reassessed and the duty was calculated accordingly.

2. Learned counsel for the petitioner''s brief argument is that though the order has been passed under Section 18 of the Customs Act, 1962 (for short ''the Act''), however, no opportunity of hearing was afforded to the petitioner before passing the order. Certain queries were raised by the respondents and the petitioner duly replied to them. The petitioner had even made a request that provisional assessment be made and a speaking order be passed after clearance of the goods, but the same was not considered.

3. On the other hand, learned counsel for the respondents submitted that the order in fact has been passed under Section 17 of the Act. It has wrongly been recorded therein that it has been passed under Section 18 of the Act. He further submitted that before passing of the order under Section 18 or 17 of the Act, no opportunity is to be granted by the Department unless it is specifically prayed for. He referred to Rule 12 of the Customs Valuations (Determination Value of Imported Goods) Rules, 2007 stating that in the process of valuation of the

goods imported, the reasons for rejection of the valuation as submitted by the importer are to be supplied to the importer, only if he asked for that and not otherwise. The petitioner never asked for that.

4. As the order has been passed under Section 17 of the Act, the petitioner can avail its remedy of appeal available in accordance with law.

5. After hearing learned counsel for the parties, we are of the opinion that the impugned order passed by respondent No. 3 deserves to be set aside as the same has been passed in violation of principles of natural justice.

6. It is undisputed case that before passing the order, the petitioner was not afforded any opportunity of hearing, even if the order is considered to have been passed under Section 17 of the Act. Initially, the Department raised queries regarding valuation while referring to earlier bill of entry of the petitioner, which was responded to by the petitioner stating that the value of the goods imported vide earlier bill of entry and in question was same, whereas the Retail Sale Price (RSP) was higher than the earlier bill of entry. Retail Sale Price is relevant for the purpose of levy of CVD. Subsequently, the department uploaded on their website that the earlier bill of entry number mentioned was wrong and uploaded a different bill of entry, vide which the petitioner had earlier imported the goods. The same was responded to, by the petitioner stating that bill of entry mentioned by the department was provisionally assessed and further the value of one of the items now imported had been on higher value than what was shown in the earlier bill of entry. A request was made by the petitioner for provisional assessment of duty and further for passing a speaking order after clearing the goods. It was replied to, by the petitioner on 10-3-2016. Without raising further query to the petitioner or affording any opportunity of hearing, the impugned order was passed on 18-3-2016. It has been observed in the order that the petitioner had already been issued notice for final assessment of duty with reference to the Bill of Entry No. 7713922 regarding which a query was put to the petitioner. It is not in dispute that no final assessment has been framed qua that bill of entry though the facts thereof are sought to be referred to while passing the impugned order.

7. Considering the fact that the petitioner in the present case has not been afforded proper opportunity of hearing, the order dated 18-3-2016 is set aside and the matter is remitted back to the competent authority for fresh consideration.

8. As pointed out by learned counsel for the petitioner that the goods being imported are perishable and its shelf life will expire in next two months, the process for final adjudication under Section 17 of the Act will take some time as even for the earlier bill of entry, final order of assessment has not yet been passed, he prayed that the goods be released after passing order of provisional assessment under Section 18 of the Act. The petitioner will comply with all the conditions for release of goods on the basis of provisional assessment, as

required in law.

9. Though learned counsel for the respondents has objected to this stating that final order can be passed after issuing notice to the petitioner, however, we find merit in the contention raised by the learned counsel for the petitioner and direct the competent authority to provisionally assess the goods imported within a period of seven days and release the same to the petitioner on complying with the procedure required to be followed after provisional assessment. The final assessment under Section 17B of the Act be framed thereafter, after granting an opportunity of hearing to the petitioner.

10. The present petition is disposed of accordingly.

