(2015) 10 MAD CK 0041

In the Madras High Court

Case No : W.P. No. 27883 of 2015 and M.P. No. 1 of 2015

Saran Enterprises APPELLANT

Vs

The Commissioner of Customs and Others RESPONDENT

Date of Decision : 15-10-2015

Acts Referred:

Citation : (2015) 10 MAD CK 0041

Hon'ble Judges : R. Mahadevan, J.

Bench : Single Bench

Advocate : A.K. Jayaraj, for the Appellant; DevendranAdvocateStanding Counsel, for the Respondent

Judgement

R. Mahadevan, J.—The writ petition is filed for the issuance of a writ of mandamus directing the respondents herein to release the goods viz. 353 Cartons viz. 6661.5 Kgs. of Ribbons imported vide Bill of Entry No. 2147487 dated 05.08.2015 on the value declared by the petitioner at USD 1.10 per Kg. and totally USD 7327.65 which was finally assessed by the Proper Officer under the Customs Act

2. The case of the petitioner is that he had imported 353 Cartons of Ribbons from China at USD 7,327.65. The petitioner shipped the above goods from M/s. YI WU RED Trade Co., Ltd., China, vide invoice dated 24.07.2015 and filed Bill of Entry No. 2147487, dated 05.08.2015 for clearance of the goods. The petitioner further submitted that they had declared the value of above goods at USD 1.10 per Kg. Thereafter, 1st check was ordered and completed and during examination the SIIB by de-stuffing the goods thoroughly had found the description and weight fully tallied with the invoice declaration. Thereafter, the petitioner had requested the respondents to release the goods and the value was verified and the declared value of USD of 1.10 per Kg, was accepted and the Bill of Entry was assessed by the Proper Officer on 05.08.2015. The petitioner had requested the respondents herein to release the goods provisionally on the value declared by the petitioner at USD 1.10 per Kg., but till date not released the goods. Hence,

the petitioner has come forward with the above writ petition.

3. Heard the submissions of the learned counsel for the petitioner as well as Dr. Devendran, learned senior standing counsel appearing on behalf of the respondent.

4. Learned counsel for the petitioner submitted that the respondents are wantonly withholding the clearance of the imported goods. Ordinarily, Bills of Entry are taken up for assessment within 48 hours and if there is any undue delay in the assessment and the clearance of the goods, the same will result in heavy demurrage and put the importers to severe financial strain. Learned counsel further submitted that IE code of a particular agent can be utilised by any of the sub-agent and referred to the Judgment reported in Proprietor, Carmel Exports and Imports Vs. Commr. of Cus., Cochin, . He further claims that according to the Bill of Entry duty payable by the petitioner company is Rs. 1,73,827/-. Further according to the learned counsel, necessary test is also conducted with regard to the quality of the products and the test report also goes in favour of the petitioner. Hence he seeks early release of the goods.

5. On the other hand, the learned senior standing counsel appearing on behalf of the respondent filed a counter affidavit and submitted that the IEC code was misused and misdeclaration related to ''Superior'' and ''Fantastic'' brands were found. Since the brand names were not properly mentioned, the investigation is proceeded. He would further submit that there is no undue delay as stated by the importer. The importer had uniformly declared USD 1.10/kgs (Rs. 70.51) for the imported consignment irrespective of the sizes and the value appears to be low compared to the contemporaneous import data on similar goods maintained in the National Import Database (NIDB) of the department pertaining to the contemporaneous period of imports ranging from Rs. 490 to Rs. 650/kgs cleared at various ports. Hence, he seeks to dismiss the Writ Petition.

6. It is claimed that the goods in question are freely importable goods and there is no restriction or prohibition for the same. When the SIIB by de-stuffing the goods inspected and found that the description and weight are fully tallied with the declaration, there is no justifiable reasons for delaying the assessment of duty and release of the goods. Hence, to give quietus to the issue, the respondent is directed to assess the value of the goods as expeditiously as possible according to the prevailing rate. In the meantime, in the interest of justice, as an interim measure for releasing the consignment, the petitioner is directed to pay the actual duty according to the invoice value and further, pay the differential duty to the tune of 30% and for the remaining 70% of differential duty, the petitioner is directed to execute a bond. On such compliance, the goods detained shall be released forthwith. Other proceedings in the manner known to law be proceeded with.

7. With the above directions, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.