

(2012) 03 MAD CK 0109

In the Madras High Court

Case No : Writ Petition No. 4098 of 2012

Shree Ganesh Steel Rolling Mills Ltd.

APPELLANT

Vs

C.C. (Seaport-Import), Chennai-I

RESPONDENT

Date of Decision : 20-03-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 195 ECR 37 : (2012) 285 ELT 163

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

Advocate : S. Murugappan, for the Appellant; K. Ravindranath, SCCG, for the Respondent

Judgement

M. Jaichandren, J.—Heard the learned counsels appearing for the parties concerned. It has been stated that the petitioner had imported two consignments of non-alloy steel slabs, under the Bills of Entry Nos. 692343, dated 1-10-2004 and 6951 93, dated 7-10-2004. The goods were supplied by M/s. Frovia, France, on the basis of a contract to supply two thousands metric tones of non-alloy steel slabs at Euro 280 (CIF), per metric tonne and sold on High Sea sale basis by M/s. State Trading Corporation, New Delhi. The petitioner sought for clearance of the goods, availing the benefits, as per the Customs Notification No. 21/2002, Sl. No. 190B, under the concessional rate of basic customs duty, at 5%. The goods covered under the first Bill of Entry No. 692343, dated 1-10-2004, had been cleared, availing the benefit of the said notification. However, in respect of the goods covered under the Bill of Entry No. 695193, dated 7-10-2004, clearance had not been made, as the goods had been subjected to examination and drawal of samples, at the instance of the Directorate of Revenue Intelligence, Chennai.

2. It had been further stated that the examination of the goods in question and the testing of the representative samples were carried out by the National Metallurgical Laboratory, Madras Centre. Based on the samples, it was opined that the goods were non-alloy steel/slab-seconds, vide report, dated

27-10-2004. The said report had been objected to by the petitioner, as to the accuracy of its conclusion. Therefore, the petitioner sought for drawal of fresh samples for the purpose of re-test, by a reputed International Agency. Since, the said request of the petitioner had been rejected, a writ petition had been filed before this Court, praying for a writ of Mandamus to direct the respondents, to permit the petitioner to draw samples, in respect of the goods covered under the Bill of Entry No. 695193, dated 7-10-2004, and the subsequent consignments covered under the Bills of Entry Nos. 702063 and 702064, dated 20-10-2004. By an order, dated 11-4-2005, made in W.P. Nos. 5700 to 5703 of 2005, this Court had issued a direction to the respondents in the said writ petition, to complete the assessment, within a period of seven days from the date of receipt of a copy of the said order, taking note of the fact that the Investigating Agency had completed the investigation and had issued a show cause notice, dated 31-3-2005. As the writ petitions had been dismissed, the petitioner had filed writ appeals, in W.A. Nos. 832 to 835 of 2005. The said writ appeals had been dismissed, by an order, dated 22-7-2005 [2006 (206) E.L.T. 76 (Mad.)]. Therefore, Special Leave Petitions, in SLP Nos. 12359 to 12362 of 2005, had been filed before the Supreme Court.

3. The Supreme Court, while disposing of the Special Leave Petitions [2007 (207) E.L.T. A34 (S.C.)] had directed the petitioner to approach the High Court, by bringing the notification, dated 21-5-1955, issued by the Central Board of Excise and Customs to its notice. The notification permits re-testing of samples, in the event of the assessee being dissatisfied, with the samples already taken by the Department. Based on the said order of the Apex Court, the First Bench of this Court had passed an order, dated 1-12-2006, in W.A. M.P. Nos. 1822 to 1825 of 2006, in Writ Appeal Nos. 832 to 835 of 2005.

4. Paragraphs 8 and 9 of the said order read as follows :

8. The learned Senior Counsel appearing for the petitioner submitted that in view of the Notification dated 21-5-1955 issued by the C.B.E. & C., the petitioner may be permitted to have the re-testing done and make their submissions before the authorities concerned. The learned Additional Solicitor General has no objection for this course of action.

9. In the light of the above, our order dated 22-7-2005 is hereby recalled and both the writ petitions and the writ appeals shall stand dismissed. The petitioner is directed to make submissions before the authorities concerned after getting the samples from the detained goods and re-test the same in accordance with Notification dated 21-5-1955. These petitions are disposed of accordingly.

5. It had been further stated that, based on the order passed by the First Bench of this Court, samples of the goods in question had been taken by the authorities concerned, for testing. As the test report was in favour of the petitioner, the Assistant Commissioner of Customs, the second respondent herein, had issued the impugned communication, dated 8-9-2011, to carry out a further test, in

respect of the 25% of the cargo detained by the authorities of the Customs Department. In such circumstances, the petitioner has preferred the present writ petition before this Court, under Article 226 of the Constitution of India.

6. The main contention of the learned counsel appearing for the petitioner is that the second respondent does not have the authority or power to order re-testing of the cargo detained by the authorities of the Customs Department, based on the reason that the report of the earlier test done, in respect of the said goods, is in favour of the petitioner.

7. It had been further stated that the testing of the samples taken from the consignment, imported by the petitioner, was based on the order of the First Bench of this Court, dated 1-12-2006, in W.A. M.P. Nos. 1822 to 1825 of 2006, in Writ Appeal Nos. 832 to 835 of 2005.

8. It had been further stated that there is no provision in law, which empowers the authorities concerned to subject the detained goods for re-testing. Further, if the re-testing is done, in respect of the detained goods, which has been lying in the open, for several years, exposed to the weather conditions, it may not show the real nature and quality of the goods in question.

9. It had also been further submitted that the respondents had not completed the original adjudication process, even after a test report, dated 21-4-2009, was made available, after the testing of the goods had been done.

10. A counter affidavit has been filed on behalf of the respondents. In the said counter affidavit, it has been stated that the re-testing of the consignment, imported by the petitioner, had been concluded, and a report, dated 21-4-2009, had been filed. As the report, dated 21-4-2009, of the Testing Center of MSME was contrary to the initial report furnished by National Metallurgical Laboratory, the Commissioner of Customs (Imports) had decided to go for a third test of the detained goods, by an approved Testing Agency, in view of the order of the Customs, Excise and Service Tax Appellate Tribunal, Principal Bench, New Delhi, in *Ramdhan Mohanlal v. CCE, Jaipur* [2009 (238) E.L.T. 677 (Tribunal)].

11. It had been further stated that even after the lapse of a number of years, it would be possible to ascertain, as to whether the cargo in question conforms to the norms laid out in BIS 2830, and therefore, the testing of the consignment in question had been ordered.

12. In view of the averments made on behalf of the petitioner, as well as the respondents, and in view of the records available, this Court is of the considered view that the decision of the authorities of the Customs Department for re-testing of the detained goods, imported by the petitioner is inappropriate and unsustainable in the eye of law.

13. It is noted that, when the First Bench of this Court, by its order, dated 1-12-2006, in W.A. M.P. Nos. 1822 to 1825 of 2006, in Writ Appeal Nos. 832 to 835 of 2005, had passed an order directing the authorities of the Customs

Department to do re-testing of the goods in question and when a report, dated 21-4-2009, had also been filed, it would not be open to the respondents to order re-testing of the said goods, once again, especially, after a lapse of a number of years.

14. Further, the only reason shown by the respondents, for directing re-testing of the goods in question is that the report, dated 21-4-2009, is contrary to the earlier report of National Metallurgical Laboratory, Madras Centre. Further, the respondents had not been in a position to show that they have the authority or the power to direct the re-testing of the goods, imported by the petitioner and detained by the authorities of the Customs Department.

15. It is not in dispute that the goods imported by the petitioner, which had been detained by the authorities of the Customs Department, has been lying in open and exposed to the varying weather conditions. While so, no proper reasons have been shown on behalf of the respondents, as to why it had been decided by the Commissioner of Customs (Imports), to go for a third test, by an approved testing agency, after a lapse of a number of years, and after the filing of the earlier report, dated 21-4-2009.

16. In such circumstances, this Court is of the considered view that it would not be open to the respondents to do the re-testing of the goods in question, pursuant to the impugned notice, dated 8-9-2011. Further, this Court finds it appropriate to direct the Commissioner of Customs (Seaport-Import), Chennai, the first respondent herein, to proceed with the adjudication process and to complete the same, based on the test report, dated 21-4-2009, obtained, pursuant to the order passed by the First Bench of this Court, dated 1-12-2006, in W.A. M.P. Nos. 1822 to 1825 of 2006, in Writ Appeal Nos. 832 to 835 of 2005, and to pass appropriate orders thereon, on merits and in accordance with law, as expeditiously as possible, not later than twelve weeks from the date of receipt of a copy of this order, after giving an opportunity of personal hearing to the petitioner. The writ petition is ordered accordingly. No costs. Connected M.P. Nos. 1, 2 and 3 of 2012 are closed.