
(2011) 02 CAL CK 0083
In the Calcutta High Court
Case No : Writ Petition No. 7 of 2011

S.J. Fabrics Pvt. Ltd.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 17-02-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Customs Act, 1962 — Section 110, 110(1), 110(2), 110A, 124

Citation : (2011) 2 CALLT 463 : (2011) 268 ELT 475

Hon'ble Judges : Indira Banerjee, J

Bench : Single Bench

Judgement

Indira Banerjee, J.—This writ application is directed against detention of trucks carrying consignments of fabrics and garments of the Petitioner for export to Bangladesh.

2. The Petitioner claims to carry on business inter alia of import and export of fabrics and garments. According to the Petitioner, the Petitioner received a purchase order from one M/s. B.M. Dress Line of Dhaka, hereinafter referred to as the foreign buyer, for supply of synthetic fabrics. The said foreign buyer, it is claimed, opened an irrevocable letter of credit dated 18th July, 2010.

3. Pursuant to the aforesaid order the Petitioner exported 12,000 metric tonnes of synthetic fabrics to the foreign buyer.

4. By a letter dated 20th July, 2010, the Petitioner offered to sell to the foreign buyer, its stock of 1,11,080 metres of different varieties of synthetic fabrics in a lot of 7126 Kgs. at the attractive rate of 3 U.S. \$ for per kilogram, 1007 pieces of synthetic sarees at the rate of 9 U.S. \$ per piece, and 9 Ornis at 1 U.S. \$ per piece.

5. According to the Petitioner, the Petitioner offered the foreign buyer a low price, for stocks which had been lying with the Petitioner for some time, having regard to its long standing business relationship with the foreign buyer.

6. After exchange of some correspondence, the foreign buyer agreed to purchase the entire lot of fabrics, synthetic sarees and ornis at the rate offered by the Petitioner, i.e. fabrics at 3 U.S. Dollar per Kg. for the synthetic fabrics and 9 U.S. \$ per piece for the synthetic sarees and 1 U.S. \$ per piece for the Ornis. On 12th August, 2010 the foreign "buyer amended the letter of credit.

7. The Petitioners despatched the goods by two trucks, hired from M/s. Arrow Roadlines, being Truck Numbers WB 25B 2579 and WB 25A 8743.

8. According to the Petitioner, the two trucks entered the Central Warehousing Corporation area at Petrapole, Land Customs Station on 30th July, 2010. The export documents were sent to the Customs House Agent, M/s. Overseas Shipping Agency.

9. The Officers of the Directorate of Revenue Intelligence intercepted the said trucks and interrogated the drivers as well as the representatives of the Customs House Agents.

10. According to the Petitioner, the said Officers of the Directorate of Revenue Intelligence have written letters dated 4th August, 2010 and 5th August, 2010 directing the Manager, Central Warehousing Corporation, Petrapole to keep vigil on the said two trucks, along with other trucks which had also been detained, and not to allow any one to remove the goods.

11. According to the Petitioner no detention order was issued u/s 110 of the Customs Act, 1962. The legality of the letters written to the Manager, Central Warehousing Corporation, Petrapole has been challenged. Section 110(1) and 110A of the Customs Act, 1962 are set out herein below for convenience:

110. Seizure of goods, documents and things.-(1) If the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods:

Provided that where it is not practicable to seize any such goods, the proper officer may serve on the owner of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer.

110-A. Provisional release of goods, documents and things seized pending adjudication.-Any goods, documents or things seized u/s 110, may pending the order of the adjudicating officer, be released to the owner on taking a bond from him in the proper form with such security and conditions as the Commissioner of Customs may require."

12. Mr. Sibdas Banerjee, appearing on behalf of the Petitioner, submitted that the trucks loaded with consignments of fabrics and garments have been detained since 12th/13th August, 2010 without any authority of law. No order u/s 110 has been issued.

13. Mr. Banerjee argued that if an order of detention had been passed u/s 110,

the Petitioner could have applied for provisional release u/s 110A.

14. Citing the judgment of a Division Bench of the High Court of Om Udyog Vs. Union of India (UOI) and Others, Mr. Banerjee submitted that the goods could not have been indefinitely detained without authority of law.

15. It is stated that summons was issued to the Director of the Petitioner Sri Dipak Verma to appear before the officer of the Director of Revenue Intelligence on 22nd August, 2010. The Director duly appeared and also submitted documents under cover of a letter dated 23rd August, 2010.

16. The Directorate of Revenue Intelligence also summoned Sri Dipak Singhania, Director of M/s. Singhania Sarees Pvt. Ltd. from whom the Petitioner had purchased the fabrics and sarees in question.

17. Mr. Banerjee pointed out that the concerned Respondents neither released the consignments nor initiated any proceedings against the Petitioner. No formal order of detention was issued u/s 110. In the circumstances, the Petitioner by its letter dated 18th October, 2010 demanded justice but to no effect.

18. In the meanwhile, on 8th October, 2010, the foreign buyer cancelled the purchase order as well as the letter of credit. The Petitioner will thus have to take back the consignments and try and sell the same in the local market or alternatively find another foreign buyer.

19. Mr. Bharadwaj appearing on behalf of the Respondents submitted that on the basis of information that certain exporters were indulging in mis-declaration and manipulation of documents to defraud Government revenue, the Directorate of Revenue Intelligence intercepted the trucks in question.

20. On demand export documents, including in particular the bill of export, could not be produced. The bills of export were neither submitted to the Customs authorities nor to the Central Warehousing Corporation authorities.

21. Mr. Bharadwaj referred to paragraph 6(g) of the "Handling of Cargo in Customs Areas Regulations, 2009" framed vide notification No. 26/2009-CUS(MT) dated 17th March, 2009 set out hereinbelow for convenience:

6. Responsibilities of Customs Cargo Service Provider:-

(1) The Customs Cargo Service shall-

(g) not permit any export cargo to enter the customs area without a shipping bill or a bill of export having been filed with the proper officer.

22. Mr. Bharadwaj submitted that the consignments in question" wrongfully entered the customs area without bills of export. The bills of export were not even produced subsequently.

23. Mr. Bharadwaj submitted that while the Respondent authorities were awaiting production of the bill of exports, a direction was issued to the Central

Warehousing Corporation authorities to ensure that the consignments were not removed.

24. Mr. Bharadwaj submitted that the goods had been detained for investigation based on specific intelligence reports that the goods were attempted to be exported illegally for unlawful gain, by availing credit under the Duty Exempted Pass Book (DEPB) Scheme.

25. It was only by way of an afterthought that the Petitioner claimed that the goods were intended for export under Non-incentive Scheme. However, whether the goods were intended to be exported under Non-incentive Scheme or not could not be established in the absence of the bill of export.

26. Mr. Bharadwaj pointed out from the affidavit-in-opposition that during the financial year 2010-11, the Petitioner had exported 70 consignments of which 65 consignments were exported under the DEPB Scheme, Had the Directorate of Revenue Intelligence not intercepted the consignments, the same may have been exported under the DEPB Scheme.

27. In the affidavit-in-opposition, it is also alleged that two amendments had been made in the proforma invoices, submitted by the Petitioner, to enhance the letter of credit coverage to cover the excess quantity of goods. The rate of synthetic fabrics was found to have drastically been changed from Rs. 2 U.S. \$ per metre to 3 U.S. \$ per kg. by adding "stock lot".

28. There are also allegations that there were discrepancies between the valuation of the fabrics and sarees in Bangladesh and in India. The manipulations, it is alleged, are with a view to defraud revenue.

29. It is not necessary for this Court to adjudicate the correctness of the allegations levelled against the Petitioner. Suffice it to note that admittedly the goods entered the customs area without the bills of entry and admittedly the bills of entry have not yet been produced. The bills of entry might determine whether the consignments are liable to confiscation or not.

30. The Petitioner has apparently come before this Court with unclean hands. This Court is thus not inclined to exercise its discretionary jurisdiction under Article 226 of the Constitution of India to direct immediate release of the goods at this stage.

31. There can be no doubt that consignments cannot be withheld indefinitely. It is also true that customs officials are not immune from accountability against abuse of power by detention of goods for indefinite period on the ground of checking value or nature of the goods as held in *Om Udyog* (supra).

32. The judgment in *Om Udyog* (supra) was, however, rendered in the particular facts of the aforesaid case where the Respondent authorities had not been able to show any justification for detention of goods for such a long time. The Division Bench held in Paragraph 12 "In the present case, no justification has been shown

for continued detention of goods".

33. A judgment is not to be interpreted rigidly, like a statute. A judgment is to be understood in the background of the facts and circumstances in which the judgment has been rendered. The sentence in the judgment "In no case non-clearance of goods for months could be justified" is to be interpreted with reference to the context in which the sentence has been used.

34. In this case, the goods entered the Customs area without the requisite bills of entry. However, even assuming that a further investigation is necessary, or the goods are liable to confiscation in this case, the goods cannot be detained indefinitely without any valid order of detention u/s 110.

35. The Respondent authorities are obliged to serve on the owner of the consignments a formal order directing the owner not to remove, part with or otherwise deal with the goods except with the previous permission of the concerned officer, in accordance with the proviso to Section 110.

36. There is no time limit for issuance of an order u/s 110 and/ or the proviso thereof. Section 110(2) provides that when any goods are seized under Sub-section (1) and no notice in respect thereof is given under Clause (a) of Section 124 within six months of the seizure of the goods, the goods shall be returned to the person from whose possession, the goods were seized.

37. The proviso to Section 110(2), however, empowers the Commissioner of Customs to extend the aforesaid period of six months by a further period of not exceeding six months on sufficient cause being shown.

38. It appears that a notice DRIF No. 110/Kol./APP/2010/Part-SJ/377-379 dated 31st January, 2011 has been issued to the Petitioner purportedly u/s 110(2) of the Customs Act for extension of time to issue show cause notice u/s 124(a) for a further period of six months.

39. The notice is apparently without authority. There was no scope for the Directorate of Revenue Intelligence to issue any notice to the Petitioner u/s 110(2) of the Customs Act.

40. Moreover, the authorities have proceeded on the basis that the goods have been detained in exercise of power u/s 110 and accordingly purported to issue the aforesaid notice u/s 110 Sub-section (2).

41. It, however, appears that there is actually no order of seizure or detention u/s 110 on the owner of the consignments. The limitation of six months to issue notice under Clause (a) of Section 124 starts from the date of seizure u/s 110.

42. There being no limitation u/s 110 a notice u/s 110 may be issued at any time. However, such notice should ordinarily be issued immediately upon interception and detention of the goods. The goods cannot indefinitely be detained without any order u/s 110.

43. The object of prescribing a period of limitation u/s 110(2) is to prevent unnecessary and/or prolonged detention of goods. It is not permissible in law to circumvent the time stipulation in Section 110(2) by recourse to indefinite detention without any specific order u/s 110.

44. However, there being no limitation for issuance of an order u/s 110, as observed above, the appropriate authority might still issue an order of detention u/s 110. Even if there were a formal order of detention u/s 110, the goods could have been detained for a period of six months and then a further period not exceeding six months if the Commissioner of Customs extended the time, on sufficient cause being shown. The allegations against the Petitioner are serious. This Court is thus not inclined to scuttle the investigation by directing release of the consignments in question.

45. The consignments shall, however, immediately be released if no show cause notice u/s 124(a) is issued within six months from the date of detention of the consignments and if six months expire and/or have already expired, within such time not exceeding further six months as the Commissioner might allow, or if the Commissioner of Customs does not extend the time and needless to mention that it will be open to the Petitioners to claim damages for wrongful detention in accordance with law.

46. The writ application is disposed of accordingly.

Writ application disposed of D.S.