(2016) 07 MAD CK 0079

In the Madras High Court

Case No : Writ Petition No. 27687 of 2015 and M.P. No. 1 of 2015

Sree Sai Inc. APPELLANT

Vs

Commissioner of Customs, Chennai-III RESPONDENT

Date of Decision : 05-07-2016

Acts Referred:

Citation : (2016) 339 ELT 203

Hon'ble Judges : T.S. Sivagnanam, J.

Bench : Single Bench

Advocate : Shri S. Krishnanand, Advocate, for the Petitioner; Shri A.P. Srinivas, Spl. GP, for the Respondent

Final Decision : Disposed Off

Judgement

T.S. Sivagnanam, J.—Heard the submissions of Mr. S. Krishnanand, learned counsel for the petitioner and Mr. A.P. Srinivas, learned Special Government Pleader appearing for the respondents and with their consent, the main writ petition itself is taken up for final disposal.

2. The order impugned in this writ petition is dated 30-7-2015 passed by the 1st respondent, which in fact, is an order passed u/s. 110A of the Customs Act. However, the petitioner has not challenged the order in its entirety, but, only the penultimate portion of the order which rejects the request made by the petitioner for provisional release of the imported goods on the ground that the actual owner of the imported goods is yet to be traced.

3. During the pendency of the writ petition, there has been certain developments and the petitioner has been issued with a show cause notice dated 29-1-2016 and Addendum dated 10-2-2016. From the said show cause notice, it is seen that the petitioner is not the only notice, but there are seven other notices and so far as the petitioner in this writ petition is concerned, it is M/s. Sree Sai Inc., represented by its Proprietor Mr. S. Dhanasekaran. In the show cause notice dated 29-1-2016, notices have been issued to M/s. Sree Sai Inc., in its individual

capacity as well as to Mr. S. Dhanasekaran, as the Proprietor of the said Firm and two other Organisations.

4. Be that as it may, we are only concerned about the Bill of Entry bearing No. 7198783, dated 28-10-2014 for clearance of goods which have been declared as "Blemished Rubber Slope Belts", classified under the heading "40103199". The show cause notice proposed to re-classify the goods stating that they are "Used Rubber Conveyor Belts" and differential duty has been arrived at. It may not be necessary to refer to the quantum of duty, which has been arrived and proposed in the show cause notice as the case of the Department is of the view that the brain behind the entire operation is one Mr. Dhanasekaran and all the firms are his group concerns. However, that issue is the subject matter of adjudication before the adjudicating officer who will adjudicate the show cause notice dated 29-1-2016. Since already the Department has completed the investigation and issued show cause notice, it has to be seen as to whether still the consignment has to be detained. Under normal circumstances, this Court would impose conditions for granting provisional release to safeguard the interest of revenue. But, from the show cause notice, it is seen that already substantial sums of money have been collected from the petitioner, viz., Rs. 11,00,000/- by way of Demand Draft dated 18-12-2014. On the account of M/s. Sree Sai Inc., Rs. 15,27,795/- from the petitioner Dhanasekaran and another amount of Rs. 3,96,000/-, by way of Demand Draft towards interest for differential duty by M/s. Sree Sai Inc. In such circumstances, the respondents are directed to release the consignment as substantial amount of money has already been collected from the petitioner and retained with the Department. The goods shall be released provisionally subject to the final adjudication of the show cause notice dated 29-1-2016 along with the Addendum dated 10-2-2016. It is needless to state that the petitioner has to co-operate in the adjudication process. The goods covered in the Bill of Entry shall be cleared within a period of fifteen days from the date of receipt of a copy of this order.

5. The learned counsel for the petitioner would submit that the petitioner has also sought for issuance of Detention Certificate for waiver of demurrage/ detention charges in terms of Regulation 6(1)(l) of the Handling of Cargo in Customs Areas Regulations, 2009, and this request shall also be considered by the respondents in accordance with law.

6. The writ petition is disposed of with the above direction. No costs. Consequently, the connected miscellaneous petition is closed.