(1985) 02 CAL CK 0034

In the Calcutta High Court

Case No : Matter No. 65 of 1982

Stores Supply (India) APPELLANT

Vs

Asstt. Collector of Customs RESPONDENT

Date of Decision : 11-02-1985

Acts Referred:
Customs Tariff Act, 1975 — Item 73.15(2)

Citation : (1990) 27 ECC 191

Hon'ble Judges : Padma Khastgir, J

Bench : Single Bench

Judgement

Padma Khastgir, J.—The petitioner herein carriers on business as dealers in steel items. The subject matter of the present petition was imported under licence dated the 9th April, 1981 for Rs. 4,95,696/-issued in favour of M/s. Rajendra Mechanical Industries Ltd., Bombay by the Joint Chief Controller of Import and Export. The petitioner is a second transferee and had thereby acquired the right to import goods to the extent of Rs. 2,80,000/- from M/s. Alloy Steel Enterprises of No. 26 Strand Road, Calcutta, who were the first transferee of the said licence. The petitioner by virtue of such transfer of the licence placed orders and/or indent on the 23rd May, 1981 to a seller at Holland for supply of stainless steel sheet cuttings 0.4 mm thick of the size of 2 ft x 5 ft. On or about the 28th September, 1981 the foreign supplier sent the goods to Calcutta Port and the goods arrived on the 6th November, 1981. The petitioner filed the necessary Bill of Entry on 25th November, 1981 along with the related documents. Against the said licence the petitioner could import cuttings of stainless steel sheets and not the sheets. The petitioner was informed by the Customs Authorities that they would levy Customs Tariff at 225 per cent on C.I.F. value of the goods imported. The petitioner requested the Customs Authorities to release the said goods on recovery of 45 per cent, that is 35 per cent basic and 10 per cent auxiliary duty since the goods imported by the petitioner were cuttings and not stainless steel sheets. According to the petitioner the cuttings of stainless steel sheet is covered by sub-heading No. (1) of Heading 73.15 which provides for duty of 45 per cent and not under sub-heading No. (2) of Heading 73.15, which provides for a duty of 225 per cent inasmuch as, the petitioner contended the sub-heading (2) specified certain items as applicable to prime quality and cuttings of stainless steel sheets and they do no fall within those specific items. From the various documents annexed to the petition it appeared that even upon the documents relied upon by the petitioner there were divergence or discrepancy in the description of the goods stated to have been imported by the petitioner, inasmuch as in some of the documents the expressions stainless steel have been used whereas in other places the expressions which have been used were cuttings and scrapings. That is the only point on which the petitioner has invoked the jurisdiction of this Court for issuance of the rule and for interim order of the release of the goods.

2. The petitioner relied on a few orders passed by Mrs. Justice Leila Seth of Delhi High Court in similar matters where the goods arrived at the port of Bombay. In those cases the learned Judge at Delhi directed the release of the goods on payment of 50 per cent of the admitted duty and on executing a bond in respect of the balance 50 per cent or by giving a bank guarantee therefore the remaining duty.

3. The only point that calls for consideration before this Court is the specification of the goods imported by the petitioner and/or classification thereof. This Court is of the view that the Customs Authorities are the proper authorities to decide as to which particular category of the goods the petitioner had imported. In the case reported in 1983 Excise Law Times, page 258: [1984] 1 ECC 302 (Del) in a similar case it was held that since "stainless steel circle" is nothing but stainless steel sheets therefore, it would be classifiable under Item 73.15 (2) of Customs Tariff Act, 1975, and not under Item 73.15 (1). It was further held in the said case that if there were two constructions which an entry could reasonably bear and one of them which was in favour of revenue was adopted, the Court would have no jurisdiction to interfere merely because the other interpretation favourable to the subject appeals to Court as the better one. It is primarily for import control Authorities to determine the head of entry in tariff Schedule under which any particular commodity fell, but if in doing so those authorities adopted a construction which no reasonable person could adopt, that is if the construction is perverse then it is a case in which the Court is competent to interfere; if there were two constructions which an entry could reasonably bear and one of them which was in favour of revenue was adopted, the Court would have no jurisdiction to interfere merely because the other interpretation is favourable to the subject.

4. Under the circumstances this Court is of the view that no ground has been made out in the petition itself for interference by this Court inasmuch as it is for the Customs Authorities to determine as to which particular Item of the Customs Tariff would govern the present case. There being no apparent mistake committed by the Customs Authorities nor there being any allegation of any

perverse finding by the Customs Authorities, this Court is reluctant to interfere with such determination. Under this circumstance, the rule is discharged and the Interim order is vacated.

5. Inasmuch as it has been contended by Mr. N.C. Roy Choudhary that at the interim stage the goods had been released by an order of Court upon the writ petitioner furnishing bank guarantee in favour of the Customs Authorities, necessary liberty may be granted to the Customs Authorities to encash the bank guarantee and reduce the security. Such leave is granted to the Authorities.