

(2010) 12 KL CK 0167

In the High Court Of Kerala

Case No : W.A. No's. 2122 and 34102 of 2010

The Union of India (UOI)

APPELLANT

Vs

Shivam International

RESPONDENT

Date of Decision : 22-12-2010

Acts Referred:

Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2008
— Rule 12, 13, 14, 3

Citation : (2011) 2 KLT 407

Hon'ble Judges : Jasti Chelameswar, C.J.;P.R. Ramachandra Menon, J

Bench : Division Bench

Advocate : John Varghese, SC, Cen. Board of Excis, for the Appellant; None, for the Respondent

Judgement

J. Chelameswar, C.J.—The instant appeal is filed aggrieved by the interim order dated 1st December, 2010 in W.P. (C). The Respondents in the above mentioned Writ Petition are the Appellants herein. The writ Petitioner/sole Respondent herein imported certain goods i.e., old and used digital multi functional printers and presented three bills of entry for home consumption marked as Ext.P1` to P3 in the Writ Petition, on payment of appropriate customs duty on the imported materials. The Appellants have not permitted the Respondent to clear the goods. The stand of the Appellants is that under the rules known as Hazardous Wastes (Management, Handling and Transboundary Movement) Rules 2008 framed pursuant to the powers conferred on the Government of India under the various provisions of the Environment (Protection) Act, 1986, the goods imported by the Respondent are suspected to be hazardous wastes falling under the Entry A-1180* of Part A and Entry B- 1110* of Part B of III Schedule appended to the above mentioned Rules.

Entry A-1180*

A1180 Waste Electrical and electronic assemblies or scrap containing, components such as accumulators and other batteries included on list A, mercury-switches, activated glass cullets from cathode-ray tubes and other activated glass and PCB-capacitors, or contaminated with Schedule 2 constituents (e.g. cadmium, mercury, lead, polychlorinated biphenyl) to an extent that they exhibit hazard characteristics indicated in Part C of this Schedule refer B1110)

Entry B- 1110*

B1110 Electrical and electronic assemblies; -Electronic assemblies consisting only of metal or alloys -Waste electrical and electronic assemblies scrap (including printed circuit boards) not containing components such as accumulators and other batteries included on list A, mercury -switches, glass from cathode-ray tubes and other activated glass and PCB-capacitors or not contaminated with constituents such as cadmium, mercury, lead, polychlorinated biphenyl) or from which these have been removed, to an extent that they do not possess any of the constituents mentioned in Schedule 2 to the extent of concentration limits specified therein

-Electrical and electronic assemblies (including printed circuit boards, electronic components and wires) destined for direct reuse and not for recycling or final disposal.

2. The expression "hazardous wastes" is defined under Rule 3(I) of the Hazardous Wastes (Management, Handling and Transboundary Movement)Rules 2008, as follows:

"hazardous waste" means any waste which by reason of any of its physical, chemical, reactive, toxic, flammable, explosive or corrosive characteristics causes danger or is likely to cause danger to health or environment, whether alone or when in contact with other wastes or substances , and shall include-

- (i) waste specified under column (3) of Schedule I,
- (ii) wastes having constituents specified in Schedule II, if their concentration is equal to or more than the limit indicated in the said Schedule, and
- (iii) wastes specified in Part A or Part B of the Schedule III in respect of import or export of such wastes in accordance with rules 12, 13 and 14 or the wastes other than those specified in Part A or Part B if they possess any of the hazardous characteristics specified in Part C of that Schedule.

3. It can be seen from the above definition that the relevant factors for determination of a particular waste as hazardous waste are the physical, chemical, reactive, toxic, flammable, explosive or corrosive characteristics which cause danger or likely to cause danger to the health or environment.

4. The above mentioned two entries of III Schedule appended to the rules indicate that certain electrical and electronic assemblies are likely to be classified

as "hazardous wastes" under the said Rules. A reading of the entries makes it clear that such a classification, (either the waste electric or electronic assemblies to be called as hazardous waste) depends upon the existence of components such as accumulators and batteries etc. with specified chemical components mentioned in the said entry. Therefore it necessarily involves an enquiry into the questions of fact on an appropriate examination of the materials imported, whether the waste electrical assemblies constitute a hazardous waste.

5. In view of the fact that the Appellants are not permitting the Respondent to clear the goods inspite of the fact that the bills of entry were presented in the month of August, the Respondent herein approached this Court by filing the above mentioned Writ Petition with the prayers as follows:

- 1) issue a writ of mandamus or such other writ, order or direction, directing the Respondents to permit the Petitioner to clear the goods covered by Exhibits P1 to P3 Bills of Entry, after paying the duty and cess due on the said goods under the Customs Act, 1962;
- 2) declare that the goods imported by the Petitioner are not prohibited for import, and therefore, are eligible to be cleared after payment of duty and cess, as envisaged under the Customs Act, 1962;
- 3) grant such other and incidental relief's as this Hon"ble Court may deem just and necessary on the facts and circumstances of this case;
- 4) Allow this Writ Petition (Civil) with costs to the Petitioner.

The Respondent herein has also sought for an interim relief in the following words:

For the reasons stated in the writ petition and affidavit in support thereof, it is humbly prayed that this Hon"ble Court be pleased to direct the Respondents to permit the Petitioner to provisionally clear the goods covered by Exhibits P1 to P3 Bills of Entry, after paying the duty and cess due on the said goods under the Customs Act, 1962, pending disposal of this Writ Petition.

6. By the order under appeal, a learned Judge of this Court on consideration of various factors directed the Appellants to conduct an examination of the goods and release the goods if they are found not to be hazardous within a period of ten days from the date of receipt of the order. Hence the appeal.

7. Heard the learned Counsel for the Appellants as well as the learned Counsel for the Respondent herein.

8. In the circumstances narrated as above, we are of the opinion that the directions given in the order under appeal byway of an interim relief are not to be granted normally, as interim relief sought for is substantially same as the main relief sought for in the Writ Petition. However, considering the competing claims of the parties to the litigation i.e., the rights of the Respondent and obligation of the State to enforce the provisions of the Environment (Protection)

Act, 1986, we deem it appropriate to dispose of the Writ Petition itself directing the Respondents/Appellants to pass a final order after such examination of the imported materials as they deem fit and proper in the circumstances, after giving a reasonable opportunity to the Respondent regarding the permissibility or otherwise of clearance of the imported materials for home consumption, within a period of two weeks from today.

9. After the appropriate examination of imported materials, if the Appellants come to the conclusion that either a part of or whole of the imported materials cannot be cleared for home consumption, they shall pass a speaking order indicating the reasons as to how such a conclusion is arrived at. If the Appellants come to a different conclusion from the one indicated above, the Appellants shall permit the Respondent to clear the imported goods or a portion thereof which is found as permissible for home consumption, within a period of one week from the date of the above mentioned decision.

In the above circumstances, the Writ Petition as well as the Writ Appeal are disposed of.