(2003) 01 MAD CK 0008

In the Madras High Court

Case No : Writ Petition No''s. 36689-36690 of 2002 and W.P.M.P. No''s. 55162-55165 of 2002

Tulsyan NEC Ltd. APPELLANT

Vs

Commissioner of Customs RESPONDENT

Date of Decision : 24-01-2003

Acts Referred:
Customs Act, 1962 — Section 122

Citation : (2003) 111 ECR 554 : (2003) 157 ELT 627

Hon'ble Judges : K.P. Sivasubramaniam, J

Bench : Single Bench

Advocate : S. Murugappan, for the Appellant; K. Ramakrishna Reddy, for the Respondent

Judgement

K.P. Sivasubramaniam, J.—In both these writ petitions, the respective petitioners/ companies seek for Certiorarified Mandamus to call for

the records relating to the order of the third respondent dated 16-9-2002, to quash the same and to direct the first respondent to permit the

examination of the National Metallurgical Laboratory Scientists as prayed for in the petitioners reply dated 16-8-2002 and 14-8-2002

respectively.

2. The following facts are sufficient for the disposal of these writ petitions :-

The petitioners/companies incorporated under the Indian Companies Act, 1956, claim to have negotiated the purchase of steel scrap in the course

of their business. Before the clearance of the goods, an investigation was launched by the second respondent alleging that the goods thus imported

are not melting scrap, but appeared to be steel sheets/plates and such goods are being imported and cleared as melting scrap. The contention of the respondents is that the petitioners are evading payment of appropriate duty. In the course of their investigation, statements were recorded from

the Officers of the petitioners/companies. It is further stated that the petitioners were forced to admit the liability of the payment of the differential

duty by conceding that the goods imported are not steel melting scrap and accordingly the differential duty was also required to be deposited.

3. Subsequently, the company made a request for inspection of the cargo and taking of expert opinion to confirm that the goods which were

imported are only melting scrap. On this request, National Metallurgical Laboratory, Chennai, was requested by the second respondent through his

letter dated 8-3-2002 to inspect the cargo. The said Laboratory issued their technical opinion on 18-3-2002, stating that the goods can be

considered as ""non-alloy steel sheets/ plates-seconds"". As the report was not clear, the second respondent appears to have sought for further

clarification with a specific query to clarify the nature of the material. It is further stated that in the subsequent clarification, the National

Metallurgical Laboratory confirmed that the goods comprised a mixture of second grade rolled plates and sheets.

4. It is further stated that when the comments of the National Metallurgical Laboratory were made available to the petitioners, they had requested

for forwarding of the comments to J.I.T. and to obtain their response. Mr. Prasad Rao, Head of Metallurgical Department of I.I.T. had also

submitted a report confirming that the material cannot be re-used for manufacturing any saleable item and can be used only for re-melting. In their

reply, the petitioners submit that the reports and clarifications given by the I.I.T. and the petitioners/companies wanted the cross-examination of the

Scientists of National Metallurgical Laboratory. Though a personal hearing was conceded, with regard to the request of the cross-examination of

the Scientists, the said request was denied as the report was of scientific and technical nature.

5. Therefore the petitioners have approached this Court complaining that the denial of cross-examination of National Metallurgical Officers was

bad in law and against the principles of natural justice.

6. I have heard both sides.

7. The learned Counsel for the petitioners contends that as the Department

seeks to rely on the report of the Scientists, it is but proper that the petitioners should be afforded with opportunity to cross-examine the Scientists.

8. A counter has been filed by the respondents mainly contending that the petitioners themselves have voluntarily admitted as to the exact nature of the goods and they have themselves agreed for referring the matter to the Technical Expert and it is only pursuant to their request, the matter was referred to National Metallurgical Laboratory (NML). The reports only confirm the voluntary admissions made by the petitioners. The opinion was in conformity with the voluntary admissions of the petitioners and therefore there was no ground for insisting the cross-examination of the NML Officers.

9. The contention of the learned Counsel for the respondent that the findings rendered by the Scientists were in conformity with the confession statement of the petitioners and therefore the petitioners cannot be allowed to cross-examine the Scientists, cannot be sustained. We are not concerned with the question of admissibility of the admissions alleged to have been made by the petitioners. The legal consequences of the statements made by the petitioners will follow in accordance with law and the respondents are entitled to rely on the same to the extent the law permits. However, on the issue as regards whether, the petitioners would be entitled to cross-examine, it is needless to point out that any material, even if it be expert evidence, if it is to be relied upon by the respondents, then such statements shall be made available for cross-examination. The petitioners will also be entitled to submit their own expert evidence either in writing or oral evidence, in which case, the respondents would also be entitled to cross-examine such expert evidence. In the event of the respondents seeking to rely on the expert opinion of the NML Scientists, then it is but proper that expert shall be made available for cross-examination by the petitioners in the interest of compliance of principles of natural justice. In the event of the respondents not relying on the report of the Scientists of NML, then there is no obligation on the part of the respondents to produce them for cross-examination. Any material to be used against the party has to be put to the aggrieved persons and the aggrieved persons should also have the freedom to cross-examine the witnesses who have given expert opinion.

10. Therefore, it is open to the respondents either to rely or not to rely on the expert opinion. If they are inclined to rely on the expert opinion, it is

but proper that the expert witness should be made available for cross-examination.

11. It is seen that the petitioners are permitted to appear in person before the Commissioner of Customs and to produce the materials available

with them. Therefore, the writ petitioners are ordered subject to the following observations :-

The respondents are directed to issue a fresh notice of enquiry to the petitioners. In the event of the respondents seeking to rely on the report

furnished by NML, the first respondent is directed to provide opportunity to the petitioners to cross-examine the Scientists. In the event of the

respondents not relying on the said reports, it is open to them to proceed on the basis of their own findings and the admissions alleged to have been

made by the petitioners. It is also open to the petitioners to adduce such expert evidence as may be necessary and in the said event, the expert

evidence thus given by them will also be liable for scrutiny by the Department and any expert witness giving opinion in favour of the petitioners shall

also be liable to be cross-examined by the Department.

12. Subject to the above observations, the writ petitions are disposed of accordingly. No costs. Consequently, connected WPMP Nos. 55162 to

55165 of 2002 are closed.