(2016) 07 MAD CK 0089

In the Madras High Court

Case No : Writ Petition Nos. 40668 of 2015, 18556 and 18558 of 2016 and M.P. No. 1 of 2015, W.M.P. Nos. 16265-16266 of 2016

V5 Polymers Pvt. Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 05-07-2016

Acts Referred:

Citation : (2016) 340 ELT 493

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

Bench : Single Bench

Advocate : Shri G. Derrick Sam, Counsel, for the Petitioner; Shri A.P. Srinivas, SPC, for the Respondent

Final Decision : Allowed

Judgement

T.S. Sivagnanam, J. - Heard Mr. G. Derrick Sam, learned counsel for the petitioner and Mr. A.P. Srinivas, learned Senior Panel Counsel appearing for the respondents and with the consent of either side, these writ petitions themselves are taken up for final disposal.

2. In all these writ petitions, the petitioners have challenged the orders-in-original Nos. 42781/2015, 42808/2015 and 42919/2015, all dated 30-10-2015. Since the facts and circumstances are identical in all the three cases, it would suffice to refer the facts in W.P. No. 18556/2016, which is the writ petition filed by the petitioner challenging the order-in-original dated 30-10-2015.

3. The petitioner had filed Bill of Entry dated 12-11-2014 for clearance of 108 metric tons of goods described as "PVC Resin Suspension Grade S65D". The said goods were imported from Taiwan and the supplier of the goods was M/s. Tricon Energy UK Ltd., the producer/manufacturer being M/s. Formosa Plastics Corporation, Taiwan. The goods were assessed under Customs Tariff Heading 3904-21-10 and cleared. Subsequently, show cause notice was issued to the petitioner by the third respondent dated 29-5-2015 on the ground that the goods

were assessed and cleared without being subjected to levy of anti-dumping duty in terms of Serial No. 8 of Notification No. 27/2014-ADD, dated 13-6-2014 and the third respondent proposed to demand an amount of Rs. 2,09,034/-. The petitioner submitted their reply and during the course of personal hearing submitted that there is no requirement that the goods should be physically exported from the European Union and that the country of export having been mentioned in Serial No. 5 in the table found in the Notification No. 27/2014 has to be interpreted to mean that the country of supplier/exporter in the case is United Kingdom.

4. The petitioner also clarified that the designated authority by letter dated 11-9-2014 clarified this aspect and informed that the goods need not be physically shipped from the country of export indicated in the relevant notification and the issue of commercial invoice by the concerned exporter of the country of export would suffice. Though such submission was made, the order-in-original came to be passed confirming the proposal in the show cause notice. The task called upon to be exercised by this Court in these writ petitions has become easier in the light of a corrigendum issued by the Directorate General of Anti-Dumping and Allied Duties published in the Government of India Gazette dated 22-1-2016.

5. This corrigendum is in partial modification of the table as found in the Notification No. 27/2014-ADD, dated 13-6-2014. The settled law being a corrigendum is deemed to be a correction in the original order and therefore, whatever effect the corrigendum seeks to grant would be with effect from the date of Notification No. 27/2014-ADD, dated 13-6-2014. Once we steer clear on this issue, all that is required to be seen is to what has been done by virtue of the corrigendum. To appreciate this aspect, it may be necessary to take note of the relevant table as found in the Notification No. 27/2014-ADD, dated 13-6-2014.

Sl. No.

Heading

Description

Country of origin

Country of export

Producer

Exporter

Amount

Unit

Currency

(1)

(2)

(3)

(4)

(5)

(6)

(7)

(8)

(9)

(10)

5

3904

Homo-polymer of vinyl chloride monomer (suspension grade)

Taiwan

European Union

Formosa Plastics Corporation

Tricon Energy UK Ltd.

Nil

MT

US Dollar

6. After the above notification came to be issued, the Customs authorities in various ports, particularly in Tuticorin and Chennai raised objections with regard to the country of export, insisting that in order of avail the duty margin allocated in the customs notification, the goods should be exported physically through the "country of export" i.e., European Union or the United States of America and in the instant case Tricon UK Ltd., and Tricon Overseas Inc.

7. In the light of the said representation from the importers, the Directorate General of Anti-Dumping and Allied Duties, issued a clarification dated 11-9-2014 and the operative portion of the same reads as follows :

"6. It is stated that the aforesaid stand taken by the Customs Authorities in some of the ports is different from the one taken by the Designated Authority in its findings and recommendations on the basis of which Department of Revenue have imposed the Anti-dumping duty. In view of the above, this Directorate is of the view that the stand taken by the customs authorities in some of the ports is not in the letter and spirit of the final findings and recommendations of the Designated Authority causing avoidable hardships to the producers and the exporters from the Subject countries and the importers in India.

7. In view of the above, it is requested that necessary clarification may please be issued to the customs authorities in different ports to the effect that in order to avail the specific duty for a particular channel of trade indicated in the notifications imposing AD duty, the goods need not be physically shipped from the ''Country of Export'' indicated in the relevant notification and the issue of commercial invoice by the concerned exporter of the ''Country of Export'' would suffice. This will not only help the customs authorities in different ports to uniformly interpret the AD duty notifications and also the importers in clearing the goods without any hassle."

8. In spite of this clarification having been issued, the petitioner was issued with the show cause notice and he brought to the notice of the authority the clarification issued, yet the authority while passing the order-in-original proposed to confirm the proposal in the show cause notice on the ground that the Notification No. 27/2014 was not amended. The authority was well justified in taking such a stand in the order-in-original because the communication of the Directorate General of Anti-Dumping and Allied Duties dated 11-9-2014 did not fructify into a notification by the Government of India.

9. However, now the things stand cleared in the light of the notification dated 22-1-2016 which is a corrigendum to the notification dated 13-6-2014 which has partially modified certain entries and in particular, the ''Country of exports'' which is to the following effect.

Sl. No.

Sub Heading or Tariff Item

Description of Goods

Country of origin

Country of exports

Producer

Exporter

Amount

Currency

Unit

(1)

(2)

(3)

(4)

(5)

(6)

(7)

(8)

(9)

(10)

5

3904

Do

Taiwan

Taiwan

Formosa Plastics Corporation

Tricon Energy UK Ltd., UK

Nil

US $

MT

10. Thus, the question of insisting that the goods had to be physically shipped from the country of export is not necessary as has been clarified by the corrigendum dated 22-1-2016. In the light of the above, the impugned orders-in-original calls for interference. Accordingly, these writ petitions are allowed and the impugned orders are quashed. Consequently, connected miscellaneous petitions are closed. No costs.