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(1996) 08 CAL CK 0007

In the Calcutta High Court

Case No : Writ Petition No. 569 of 1996

Ved Kumari APPELLANT

Vs

Commissioner of Customs RESPONDENT

Date of Decision : 20-08-1996

Acts Referred:
Customs Act, 1962 — Section 110, 112, 115(2), 125, 126

Citation : (1997) 94 ELT 73

Hon'ble Judges : Tarun Chatterjee, J

Bench : Single Bench

Advocate : None, for the Appellant;Mitra, for the Respondent

Judgement

Tarun Chatterjee, J.—In course of preventive checks, officers of Dum Dum Central Excise Division under Calcutta Collectorate on 19-2-1992 detected lorry No. DIL-5036 on B.T. Road, Calcutta alongwith 46 wooden crates on it. The occupants of the lorry on being asked by the officer could not produce any document to the officer. As the wooden crates bore the markings of its import from foreign country, officer brought the lorry and 46 crates with its occupants to the Custom House and formally handed over the truck along with its occupants and goods on board to Assistant Controller (P.G.) for necessary enquiry into the case on 19-2-1992.

2. An enquiry was conducted and the occupants of the lorry namely the driver, khalasi and local guide were examined and their statements were recorded.

3. The goods found in 46 crates as per inventory were seized u/s 110 of the Customs Act on the reasonable belief that the same were imported illegally and fraudulantly in India from a foreign country by misdeclaring its quantity and contents making those liable for confiscation under the provision of Customs Act, 1962. Copy of the inventory of the seized goods was handed over to the representative of the importer.

4. An adjudication proceeding was started thereafter and in respect of the seized

goods the name of the importer was mentioned as M/s. Varda Telecopiers. By a final order dated 24th November, 1993 the Collector of Customs (P) West Bengal, Calcutta passed the following order in respect of the aforesaid confiscated goods:

"I, therefore, order confiscation of the goods seized from 46 pkgs. in this case and as per inventory. But having regard to the facts that the amount of duty to the tune of Rs. 1,93,7167- and Rs. 1,24,684 i.e. total Rs. 3,18,400/- was paid for declared components of 30 sets in the aforesaid 46 pkgs., I allow the party to redeem the goods under seizure in lieu of confiscation on payment of a fine of Rs. 2 (Two) lac + duty calculated proportionately on components of 10 sets. The option has to be exercised within one month from the date of receipt of this order. The truck which was used for carrying seized goods are also ordered for confiscation u/s 115(2) of C. A. 1962, with an option to the legal owner of the truck to redeem the vehicle on payment of a fine of Rs. 10 (ten) thousand in lieu of confiscation. The option should be exercised within one month from the date of receipt of this order. However, as the said truck has already been released provisionally on deposit of a cash security of Rs. 3,000/- (Rupees three thousand only). Which is ordered to be adjusted against the redemption fine now imposed. The bond executed in this connection shall also stand cancelled.

As from the records I am convinced that the owner of the truck did not have any knowledge about the contraband nature of the goods nor the driver, cleaner/ guide found in the truck had any connivance in the carriage of contraband goods. The goods were being carried as normal course of their transport business and I absolve Shri Abdul Rahim, owner of the truck, Shri Sarfuddin, driver and Shri Kartick Ch. Prajapati, Guide, from the charged levelled against them. I, however, hold S/Shri Parminder Singh the local agent of the importer M/s. Sri Varda Telecopier, Jharsa Road, Gurgaon, the importer on record and Shri Shyam Gupta who was originally named by Shri Par-minder Singh as the man behind the import of the 46 pkgs. in two consignments as mentioned earlier are the persons concerned within the meaning of Section 112 of the Customs Act, 1962 and impose penalty on all of them. I impose penalty of Rs. 1,00,000/- (Rupees one lac) only on M/s. Sri Varda Telecopier, Jharsa Road, Gurgaon the recorded importer of the subject goods seized and impose penalty of Rs. 1,00,000/- (Rupees one lac) only on Shri Shyam Gupta who was actually the main brain behind such illegal imports and clearance through Calcutta Airport. I also impose penalty of Rs. 1,00,000/-(Rupees one lac) only on Shri Parminder Singh the local agent of the importer.

I am not inclined to drop charges against the clearing agents who were also instrumental in clearing the goods from Calcutta Airport. I am not inclined however refrain from imposing any penalty on them. They are cautioned to be more careful and responsible in future while dealing with such cases. Since there is prima facie lapse on the part of examining officers who cleared the goods, the Deptt. will be at liberty to take such action as deemed fit."

5. It will appear from the aforesaid order of the Collector of Customs (P), West

Bengal that the goods were confiscated but the importers were given liberty to redeem the goods in lieu of confiscation. Mr. Chatterjee, learned advocate appearing for the writ petitioner, submits that although several re-preservations were made by the writ petitioner before the authorities to release the consigned goods on payment of the entire amount as mentioned in the aforesaid order of the Collector of Customs but the release has not yet been effected by the authorities.

6. Mr. Mitra learned advocate appearing for the Customs Authorities, however, submits that the question of releasing the confiscated goods cannot arise for two reasons. First reason is that in the order passed by the Collector, one month time was given to the importer to get the goods released on redemption in lieu of confiscation. Secondly, the writ petitioner has been found not to be the person entitled to get the release order from the Customs Authority, as it has been found on enquiry by the Customs Authority that there is no such existence of any firm in the name of M/s. Varda Telecopiers. The writ petitioner in affidavit-in-reply has made certain annexures to show that the writ petitioner is the proprietor of the said M/s. Varda Telecopiers on the death of her husband Late Dharam Pal. Since this is a question of fact I am unable to give any relief at this stage to the writ petitioner. But on the other hand a direction should be given to the Customs Authorities to start an adjudication proceeding for which they will make an enquiry on the documents and materials to be produced by the parties and thereafter shall come to a conclusion as to whether the writ petitioner is entitled to release of the goods in question. At the time of such hearing it will be open to the Customs Authorities to decide as to whether in view of the order of the Collector of Customs confiscating the goods and liberty given to the importer to get the goods released on redemption in lieu of confiscation, the consigned goods which have been confiscated by the said order are to be held as properties of the Central Government on confiscation in terms of Section 126 of the Customs Act.

7. All these questions, I am of the view, cannot be decided at this stage. Therefore, after hearing learned Counsel for the parties and after considering the submissions made on behalf of the parties and the materials on record I am of the view that the writ application should be disposed of by giving certain directions which are as follows :

(a) The adjudicating authority shall start a proceeding regarding the release of the consigned goods within a month from the date after serving a notice fixing a date of hearing of the same to the writ petitioner. Notice of the proceeding which is to be initiated by the authorities on the basis of this order, however, shall be served on the learned advocate of the writ petitioner i.e. Shri Om Prakash Chowdhury at 9 Old Post Office Street, Calcutta. It will also be open to the authorities to serve the notice on the writ petitioner in the address given in the Cause Title of the writ application.

(b) The writ petitioner shall be entitled to produce all documents and other materials to prove that the writ petitioner is entitled to get release the confiscated goods on deposit of the amount mentione the confiscation order passed by the Collector of Customs, Calcutta.

(c) After production of documents and evidence to be adduced by the parties it will be open to the authorities to come to the conclusion as to whether the writ petitioner is entitled to get an order of release in terms of the order passed by the Collector of Customs in the aforesaid proceeding the order of which is at page 47 of the writ application. If the authorities come to the conclusion that the writ petitioner is entitled to the order of release of the goods confiscated then it will be open to the authorities to consider the effect of Sections 125 and 126 of the Act as Section 126 provides vesting of the properties on confiscation. If the respondents come to the conclusion that inspite of the aforesaid provision the writ petitioner will be entitled to get an order of release then the respondents shall pass such an order of release subject to the payment of terms of the order passed by the Collector of Customs, copy of which is at page-47 to the writ application, (d) I make it clear that before coming to a final conclusion the writ petitioner must be given an opportunity of hearing and to produce documents in support of her claim for release of the confiscated goods and after the hearing it will be open to the adjudicating authorities to come to the conclusion in respect of the disputes as raised.

(e) The final order in the Adjudicating Proceeding must be passed within 2 months from the date of communication of this order.

Let it be kept on record that Mr. Mitra learned advocate appearing for the Customs Authorities submits that although enquiries were held to find out the address of the writ petitioner in Haryana but it was found that in the address given in the writ application the writ petitioner was not residing. Mr. Mitra also disputes as to the claim of ownership of Shri Dharam Pal, the deceased husband of the writ petitioner in respect of the confiscated goods.

With these observations this writ application is disposed of. There will be no order as to costs.

All parties including the Customs Authority are to act on a signed xerox-copy of this Dictated Order on the usual undertaking.