(2015) 07 MAD CK 0230

In the Madras High Court

Case No : Writ Petition No. 22811 of 2015, M.P. Nos. 1 & 2 of 2015

Vega Impex APPELLANT

Vs

The Commissioner of Customs and Others RESPONDENT

Date of Decision : 28-07-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 110, 110A, 74

Citation : (2015) 07 MAD CK 0230

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Advocate : G. Derrick Sam, for the Appellant; A.P. Srinivas, SC, Advocates for the Respondent

Judgement

T. Raja, J—Heard the learned counsel for the petitioner and Mr.A.P. Srinivas, learned Standing Counsel, who took notice for the respondents 1 and 2 and with their consent, the Writ Petition is taken up for final disposal.

2. This writ petition has been filed under Article 226 of the Constitution of India, seeking to quash the impugned communication dated 22.7.2015 of the 2nd respondent in S. Misc. 23/2015-DIU, in so far as it relates to the attachment of the drawback amount credited to the petitioner''s account.

3.1. Learned counsel for the petitioner would submit that the petitioner M/s. Vega Impex, represented by its proprietor S.Karthikeyan, being a regular exporter of Textiles engaged in the business for the last one year, in the course of their business, they filed shipping bill bearing Nos. 9877349 dated 30.05.2015 and 9905893 dated 31.05.2015 for export of goods described as saree fabrics/ lungies.

3.2. In this background, according to the learned counsel for the petitioner, the grievance of the petitioner is that at the time of entering the description in the shipping bills instead of the description "lungi fabric", the description was wrongly entered as "coloured saree". This inadvertent clerical error was committed by the customs broker of the petitioner''s concern. But, according to the learned counsel for the petitioner, the invoice and packing list accompanying the shipping bills contains the correct description and this proves the petitioner''s bona- fide.

3.3. That apart, according to the learned counsel for the petitioner, the goods were seized under Section 110 of the Customs Act, 1962 (hereinafter referred to as "the Act") on the ground that the petitioner has mis-declared the description of the goods with an intention to avail higher duty drawback under Section 74 of the Act and the said allegation was made on the basis that the petitioner had deliberately entered the description of the goods as "coloured saree" instead of "lungi fabric", as coloured saree attracted higher duty drawback. However, a copy of the seizure mahazar was not given to the petitioner.

3.4. Besides, according to the learned counsel for the petitioner, when the petitioner was asked to produce several documents like purchase bills of the goods, which were entered for export, they were given to the Superintendent of Customs (DIU) on various dates and the goods under export were also subjected to 100% examination. Subsequently, several representations were made by the petitioner to provisionally release the subject goods under the provisions of Section 110A of the Act, however, there was no response. Therefore, the petitioner vide its letter dated 15.07.2015, requested the 1st respondent to provisionally release the goods. But, in the meanwhile, the 1st respondent vide his letter dated 25.06.2015, by addressing the 3rd respondent, asked him to freeze the bank account of the petitioner company, but, subsequently, according to the learned counsel for the petitioner, they have de-freezed the bank account. However, the seized goods have not been provisionally released. Hence, the petitioner is before this Court.

3.5. In support of his contentions, learned counsel for the petitioner, after narrating the facts, has placed on record the Circular No. 1/2011-Cus., dated 04.01.2011 (F.No. 401/179/2009-Cus.III), giving guidelines for provisional release of seized export goods.

4. On a perusal of the above circular, it is crystal clear that in case the export goods are found to be mis-declared in terms of quantity, value and description and are seized for being liable to confiscation under the Customs Act, 1962, the same may be ordered to be released provisionally on execution of a Bond of an amount equivalent to the value of goods along with furnishing an appropriate security in order to cover the redemption fine and penalty.

5. That apart, even in terms of Section 110A of the Act, the Assessing Officer is duty bound to release provisionally the goods after taking a personal bond in the proper form with such security and conditions as the adjudicating authority deems fit. At this juncture it is relevant to extract below Section 110A of the Act:

"110-A Provisional release of goods, documents and things seized pending adjudication:- Any goods, documents or things seized under section 110, may pending the order of the [adjudicating authority], be released to the owner on taking a bond from him in the proper form with such security and conditions as the [adjudicating authority] may require".

6. When that being the position, in spite of the Circular cited supra, it is not known why the respondent has not provisionally released the goods, by exercising his power under Section 110A of the Act read with Circular dated 04.01.2011 cited supra.

7. Therefore, the 2nd respondent, the Assistant Commissioner of Customs, O/o. The Commissioner of Customs, Chennai III Commissionerate, Custom House, Chennai is hereby directed to consider the petitioner''s representation dated 15.07.2015, in the light of Circular No. 1/2011-Cus., dated 04.01.2011 (F.No. 401/179/2009-Cus.III) read with Section 110A of Act and pass orders with a direction to release the goods provisionally forthwith on execution of a Bond of an amount equivalent to the value of goods along with furnishing an appropriate security in order to cover the redemption fine and penalty.

The writ petition is disposed of with the above direction. No costs. Connected miscellaneous petitions are closed.