(1995) 09 MAD CK 0113

In the Madras High Court

Case No : Writ Petition No. 12116 of 1995

Wipro Limited — APPELLANT

Vs

Asstt. Commissioner of Customs, Madras — RESPONDENT

Date of Decision : 18-09-1995

Acts Referred:
Customs Act, 1962 — Section 111, 17, 18

Citation : (1996) 81 ELT 28

Hon'ble Judges : R. Jayasimha Babu, J

Bench : Single Bench

Advocate : Shri G. Chander Kumar for M/s. R. Raghavan, for the Appellant; Shri C.A. Sundaram, A.C.G.S.C., for the Respondent

Judgement

1. Petitioner has imported goods which have been described by it as computer parts and accessories. The ship arrived on 13-6-1995. The bills of entry in respect of these items were filed between 14-7-1995 and 2-8-1995.

2. As the respondents were of the view that the import so effected by the petitioner was in violation of the provisions of the Customs Act, the goods have so far not been released to the petitioner. The respondents obtained a sample of these goods on 4-8-1995 which was scrutinised at the instance of the respondents by the Indian Institute of Technology at Madras. The respondents are presently of the view that the goods imported are computers in SKD/CKD condition. A summons has been served on the petitioner to appear before the respondents for an enquiry.

3. Counsel for the respondents submitted that the investigation will be completed within a week''s time and a show cause notice will be issued to the petitioner shortly thereafter.

4. Petitioner at this stage seeks release of the imported goods on the ground that there has been no violation of any of the provisions of the Act. The dispute, if any, it was submitted, could only be regarding the appropriate heading under

which goods should be assessed - Entry 84.71 or 84.73. The petitioner therefore contends that the pending adjudication of the proper duty, it is entitled to the release of the goods after the same are provisionally assessed to duty u/s 18 of the Customs Act.

5. The respondents contend that investigations are in progress into suspected violations of licensing condition, misdeclaration and non-disclosure, and that investigation has to be completed.

6. Mr. Chander Kumar, Senior learned Counsel for petitioner placed before this Court a letter dated 8-9-1995 from the Additional Director, Department of Electronics wherein it is stated that on an examination of the purchase order pursuant to which these goods were imported, the Department of Electronics is of the view that these goods do not constitute''... CKD or SKD kits in terms of the Export Policy 1992-97. It is also stated in that letter that the petitioner "is one of the leading manufacturers of computer systems and software with 180,9000 approval. They are regular importers of Hi tech items used in the manufacturing process." By that letter a request has been made to respondents that".... urgent action may please be taken to clear the consignment since computer technology changes rapidly, and delay in clearance may lead to rendering the inventory obsolete. Counsel submitted that in view of the expert and authoritative opinion of the Department of Electronics, the respondents have no tenable reasons for not releasing the goods. Learned counsel for the respondents submitted that this letter of the Department of Electronics was brought to their notice only now and that they will consider the contents of that letter with due care.

7. Learned counsel for the respondents however contended that it is not open to the writ petitioner to secure release of the goods, in this proceeding in view of the law laid down by this Court in the case of Collector of Customs, Madras Vs. Madras Electro Castings P. Ltd., . That was a case where pending disposal of an appeal against the order of adjudication directing confiscation, the appellant sought the release of the goods by filing a writ petition before this Court. The Division Bench held that it is impermissible to entertain a writ petition for such a purpose. Counsel submitted that what cannot be done after adjudication cannot also be done prior to adjudication.

8. Learned Counsel for the petitioner, on the other hand, submitted that in that judgment of the Division Bench Sections 17 and 18 of the Customs Act were not adverted to as in that [case], there was an adjudication. He, therefore, submitted that notwithstanding that decision, the petitioner is entitled to seek release of the goods as the action of the respondents in not acceding to petitioner''s requests was arbitrary and mala fide.

9. Learned counsel for the petitioner submitted that the petitioner has not violated any of the terms of the licence, that it has disclosed all the relevant particulars, and that it had not misdeclared the goods. Section 111 of the Act, it was contended, is in no way attracted as the goods that were imported are not

prohibited goods, but are only restricted items, and the import has taken place under a valid license.

10. In the case of Sheikh Mohd. Omer Vs. Collector of Customs, Calcutta and Others, the Supreme Court considered a similar argument viz., that mere restriction does not amount to prohibition for purposes of Section 111 of the Act, and held that "The expression ''any prohibition'' in Section 111(d) applies to every type of prohibition. The prohibition may be complete or partial. Any restriction on import or export is to an extent a prohibition. The expression ''any prohibition'' in Section 111(d) of the Customs Act includes restrictions. Merely because Section 3 of the Imports and Exports (Control) Act, 1947 uses three different expressions ''prohibiting'' ''restricting'' or ''otherwise controlling'' we cannot cut down the amplitude of the words ''any prohibition'' in Section 111(d) of the Act.''Any prohibition'' means every prohibition. In other words, all types of prohibitions. Restriction is one type of prohibition.

11. As restriction is also prohibition for purposes of Section 111(d) and the alleged violations are under investigation, it is for the respondents to take a decision regarding the release of the goods.

12. Learned counsel for the petitioner submitted that the petitioner has been put to extreme hardship by reason of the goods not having been released, and that the work in the factory is being brought to a stand-still by reason of the wholly arbitrary and unreasonable refusal on the part of the respondents to release the goods. The petitioner cannot proceed with the manufacture of computers in which business the petitioner is engaged, without these goods. It was submitted that unless the orders placed with it by its customers are completed before the end of this month, such orders will be cancelled as the customers will not get the benefit of depreciation and the generation of computers for manufacture of which these goods have been imported, will become obsolete as the next generation of computers is already in the market and these imported goods will lose their marketability.

13. While there can be no doubt the respondents'' power and their duty to investigate violations of the provisions of the Act, respondents also owe a duty to those affected by their actions not to cause them undue hardship. Respondents owe that duty in a large measure to persons who bona fide need to utilise the imported goods as essential components in the products manufactured by them. Respondents may take all necessary steps to safeguard the interests of revenue, without being callous about the avoidable difficulties and hardships of the manufacturer/importer.

14. The respondents have with them a sample of goods. It has been subjected to test and scrutiny. They now have before them the expert and authoritative view of the Department of Electronics. The petitioner is not a casual trader/importer but is an established and well recognised manufacturer of a high technology product, certified as such by the Government of India, Department of Electronics.

The imported goods are essential for manufacture of their product viz., computer. There are deadlines to be met for delivery of the product. By withholding release of these items, even when it is not essential to so withhold, wholly avoidable and undue hardship is caused without any ''benefit'' to the country. Even the Department of Electronics has sought the release of the goods. The respondent should not, ignoring all these factors, refuse release only on this ground that they have the power to confiscate.

15. Counsel for the petitioner submitted that a detailed representation will be filed to the respondents tomorrow supplementing the letters already sent to the respondents. If such a representation is given for release of the goods, respondents shall consider and dispose of the same within five days and in any case on or before 25th September, after due consideration to all relevant matters. It will be open to the respondents to obtain such bonds/guarantee/ undertakings in addition to the duty as a condition for release of the goods.

16. Respondents shall complete the investigation in one week as undertaken by them and send a show cause notice if there are any violations by 26-9-1995. Adjudication shall be completed within four weeks thereafter. Petition is disposed of with these directions.

