BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.02.2017

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition(MD)No.383 of 2017

M/S.Preethi Impex
(rep. by its Partner L.Venkatasubramanian)
No.97H-5A Devaki Nagar, 2nd Street,
Tuticorin-628 008,
Thoothukudi District. ... Petitioner

Vs.

1.The Commissioner of Customs
Customs House
Tuticorin – 628 004

2.The Assistant Commissioner of Customs
Customs House
Tuticorin – 628 004

3.The Deputy Director,
Directorate of Revenue Intelligence,
Tuticorin. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for records relating to the impugned order C.No. VIII/10/113/2016-Adjn dated 08/12/2016 passed by the 2nd respondent, quash the same and directing the respondents herein to release the goods imported vide bill of entry No.6739061 dated 16.09.2016 under section 110 A of the customs act after accepting a bond with appropriate bank guarantee.

For Petitioner : Mr.R.Vinoth Bharathi
For Respondents : Mr.S.Gurumoorthy

ORDER

This writ petition is filed challenging the order passed by the second respondent, dated 08.12.2016, and for further direction to the second respondent to release the goods imported by bill of entry No.6739061, dated 16.09.2016, under section 110 A of the Customs Act, after accepting a bond with appropriate bank guarantee.

2.The case of the petitioner in short as follows:-

It is a partnership Firm engaged in the business of importing and trading fabric items. The petitioner filed bill of entry No.6739061 dated 16.09.2016 for clearance of Flock Fabrics. On self assessment scheme as provided under Section 17 of the Customs Act, the goods were allowed to be cleared on payment of admitted customs duty of Rs.5,63,046/-. Accordingly, the customs duty of Rs.5,63,046/- had been paid by the petitioner on 16.09.2016. While removing the goods from the customs area, the same were seized under Section 110 of the Customs Act by the Officers of the Directorate of Revenue Intelligence on the ground that the goods in the said bill of entry were mis-declared. Since the adjudication of the said issue will take some time, the petitioner wanted provisional release of the goods under Section 110A of the said Act. Accordingly, they made a request on 08.11.2016 to the first respondent for provisional release of the goods under Section 110A of the Act. The petitioner made further representation on 22.11.2016 enclosing a demand draft for Rs.23,09,358/- towards full differential duty for the value of goods alleged to have been mis-declared by the petitioner under seizure mahazar dated 21.10.2016. Even thereafter, the goods were not released. Therefore, the petitioner made another representation on 08.12.2016 for release of the goods. Now, the impugned order is passed calling upon the petitioner to execute a bond for Rs.16,62,974/- being total value of cargo imported and to furnish a bank guarantee for Rs.20,00,000/- with self-renewal clause, if the goods are to be released provisionally. Hence, this writ petition.

3.The second respondent filed a counter affidavit, wherein it is contended as follows:-

The cargo was mis-declared and mis-classified and therefore, the same was seized under Section 110 of the Customs Act, 1962 by the Directorate of Revenue Intelligence, Tuticorin, on 21.10.2016. The differential duty amount for the mis-declared goods was arrived at as Rs.23,09,358/- and the importer has also paid the differential duty. The importer requested for the release of the goods provisionally. The Directorate of Revenue Intelligence, Tuticorin has informed the customs authority to consider such request provisionally under Section 110A of the Customs Act. Consequently, the adjudicating authority passed the impugned order imposing the conditions as stated supra for such release.

4.The learned counsel appearing for the petitioner submitted that when the petitioner has paid the entire differential duty amount of Rs.23,09,358/- apart from paying the admitted customs duty of Rs.5,63,046/-, the respondents are not justified in imposing further condition for the release of the goods provisionally, which, according to the petitioner, is onerous one. The learned counsel in support of his submission that the goods can be released provisionally, if the interest of the revenue is safeguarded even by making the payment of differential duty to an extent of 50%, relied on a Division Bench decision of this Court reported in **2015(317) E.L.T. 31 (Mad)** (Commissioner of Customs (Seaport-Export), Chennai vs. J.Sheik Parith).

5.On the other hand, the learned counsel appearing for the respondents submitted that the maximus penalty levied under Section 114AA of the Customs Act would be upto 5 times of the value of the goods involved and therefore, the interest of the revenue should be safeguarded for the release of the goods provisionally. The learned Standing Counsel, however, admitted that the petitioner apart from paying admitted duty of Rs.5,63,046/- has also paid the differential duty of Rs.23,09,358/-.

6.Heard both sides.

7.The point for consideration in this writ petition is as to whether the petitioner is entitled to get the goods released provisionally under Section 110 A of the Customs Act by only after complying with the conditions stipulated in the impugned order. It is not in dispute that the subject matter goods is not a prohibited items, so that the same can never be released either provisionally or otherwise. On the other hand, the fact remains that the respondents agreed to release the goods provisionally, however, by insisting upon the petitioner to comply with the conditions stipulated in the impugned communication. It is seen that the petitioner has already paid the admitted customs duty of Rs.5,63,046/- based on self assessment scheme. As the goods are seized on the allegation of mis-declaration, in order to facilitate the release of the goods provisionally as contemplated under Section 110A of the Customs Act, the petitioner, apart from paying the admitted customs duty, has also come forward to pay the differential duty of Rs.23,09,358/- and accordingly, paid the same to the department. Therefore, the only question that has to be considered and decided by the adjudicating authority is as to whether there was any mis-declaration and if it is so, what is the penalty and fine amount liable to be paid by the petitioner apart from the differential duty payable. In this case, admittedly, the petitioner has paid the differential duty. Therefore, when the petitioner himself has come forward to protect the interest of the revenue by paying differential duty in full, this Court is of the view that further interest of the revenue can be protected by imposing the following conditions instead of one stipulated in the impugned proceedings. Thus, for the purpose of protecting the interest of the revenue, the petitioner shall furnish a bond for a sum of Rs.40,00,000/- and bank guarantee for Rs.5,00,000/- instead of furnishing a bond for Rs.16,62,974/- and bank guarantee for Rs.20,00,000/- as sought for in the impugned order. If such condition is imposed on the petitioner for provisional release, I am of the view that the interest of the revenue will not be defeated in any manner and on the other hand, the same will be safeguarded. In fact, the Division Bench decision relied upon by the petitioner has also upheld the order of the learned Single Judge ordering provisional release based on the payment of 50% of the differential duty as assessed by the department. In this case, the petitioner has paid the entire differential duty. Therefore, the case of the petitioner is in a better footing than the facts of the case relied on by the petitioner in the case reported in **2015(317) E.L.T. 31 (Mad)** (cited supra).

8.Accordingly, this writ petition is allowed and the impugned order is set aside and the respondents are directed to release the subject matter goods covered under the bill of entry No.6739061, dated 16.09.2016 as follows:-

(a) the petitioner shall furnish a bond for a sum of Rs.40,00,000/- (Rupees Forty Lakhs only) and bank guarantee for a sum of Rs.5,00,000/- (Rupees Five Lakhs only) periodically renewable, within a period of seven days from the date of receipt a copy of this order to the second respondent.

(b) On receipt of such personal bond and the bank guarantee within the time stipulated as stated supra, the respondents shall release the goods covered under the bill of entry No.6739061, dated 16.09.2016 within a period of two weeks thereafter. No costs.

Sd/-
Assistant Registrar(P&A)

/True Copy/

Sub Assistant Registrar

To
1.The Commissioner of Customes
Customs House, Tuticorin - 628 004

2.The Assistant Commissioner of Customs
Customs House, Tuticorin - 628 004

3.The Deputy Director,
Directorate of Revenue Intelligence, Tuticorin.

+2cc to Mr.R.Vinoth Bharathi, Advocate SR.No.7340
+1cc to Mr.S.Gurumoorthy, Advocate Sr.No.7347

skn
SM:MR:SAR 1:16.02.2017:4p/7c