IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2018

CORAM:

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.29380 of 2018

M/s.SLV Trading Company
No.9B, Sastri Nagar, C.Y.S.Road,
Mangalapuram, Perambur
Chennai-600 012.
By its Proprietor Mr.S.L.Vijay ..Petitioner

Vs

1. The Commissioner of Customs (Gr.3)
   Chennai II Commissionerate
   No.60, Rajaji Salai, Customs House,
   Chennai-600 001.

2. The Commissioner of Customs (DIU)
   Chennai III Commissionerate
   No.60, Rajaji Salai, Custom House
   Chennai-600 001.

3. The Deputy Commissioner of Customs (Gr.3)
   No.60, Rajaji Salai, Custom House
   Chennai-600 001.

4. The Deputy Commissioner of Customs (DIU)
   No.60, Rajaji Salai, Custom House,
   Chennai-600 001. ..Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of mandamus, directing the respondents herein to provisionally release the goods, covered under Bill of Entry No.8575624 dated 23.10.2018 (except for the offending goods viz., 552 cartons of Sewing Machine Needless, which was found in excess and inadvertently shipped by the overseas buyer) which goods could be detained and further pray for release of the remaining non-offending goods, covered under the said Bill of Entry No.8575624 dated 23.10.2018 in terms of the powers vested with the respondents under Section 110A of the Customs Act r/w Customs (Provisional Assessment) Regulations and by considering the representation of the petitioner dated 30.10.2018.

For Petitioner : Mr.S.Baskaran
For Respondents: Mr.K.Magesh, standing counsel

O R D E R

The petitioner seeks for mandamus directing the respondents herein to provisionally release the goods, covered under Bill of Entry No.8575624 dated 23.10.2018 (except for the offending goods viz., 552 cartons of Sewing Machine Needless, which was found in excess and inadvertently shipped by the overseas buyer) which goods could be detained and further pray for release of the remaining non-offending goods, covered under the said Bill of Entry No.8575624 dated 23.10.2018 in terms of the powers vested with the respondents under Section 110A of the Customs Act r/w Customs (Provisional Assessment) Regulations and by considering the representation of the petitioner dated 30.10.2018.

2. The case of the petitioner is as follows:

The petitioner is in the business of trading and import of gift, stationery items and other house hold items. They are issued with Import and Export Code. They have filed Bill of Entry No.8575624 dated 23.10.2018 for clearing the goods imported from a foreign supplier. The Bill of Entry was taken up for scrutiny on 27.10.2018 and it was found that all the goods described in the invoice were found to be as declared, while in addition to that, it was also found that 552 cartons of sewing machine needless were found in excess in the import consignment, which was not ultimately declared. Therefore, the DIU Officers had seized the said goods under Mahazar. The petitioner has given an explanation that it is one Mr.Khettendra Pal, who had imported the goods using his IEC and that he would appear before the officers and explain the reasons for the excess goods found in the import consignment. The overseas supplier has sent a communication to the Chief Commissioner of Customs on the request made by the said Khettendra Paul, stating that an inadvertent mistake of wrong shipment was made and accordingly, they sought for re-export of 552 cartons of sewing machine needle. The said Khettendra Paul also appeared before the DIU Officials and explained the entire sequence of events. The officials have ill treated the petitioner. When the goods under import are admittedly not prohibited goods, while the sewing machine needles attracting payment of additional duty, which was found in excess was ultimately not ordered by the importer and the same was even accepted by the overseas supplier, no mala fides could be attributed as against the petitioner/importer and therefore, there cannot be any impediment to process the request made by the petitioner for provisional release of the goods in terms of Section 110A of the Customs Act. Hence, the present writ petition.

3. A counter affidavit is filed by the respondents, wherein it is stated as follows:

The petitioner has filed a Bill of Entry No.8575624 dated 23.10.2018 for import of goods declared as "Shirt pin for garments, sealed rope for garments, safety pin for garments, shirt clip for garments, Christmas decoration light and horn" from China. On suspicion, the goods were examined and found to cotnain some declared goods along with 2,22,00,000 Nos of "White crane needles" and 67,20,000 Nos. of "Sewing Machine Needles" concealed in the back part of the 40 feet container behind and underneath the declared goods. Therefore, the same was seized vide Mahazar dated 27.10.2018. The information was received by the Department that industrial needles which attract additional duty were imported in the container No.HMMU6066767, even before the opening of the container. The offending goods were concealed towards the back end of the container underneath the declared cargo and therefore, the petitioner's contention that the goods were inadvertently shipped by the overseas buyer is incorrect. The petitioner is not the actual importer of the goods and he is not aware of the goods imported and also failed to submit any document to substantiate to prove the original importer of the goods. The investigation is still under progress and the persons involved are not cooperating inspite of issuance of various summons. The goods have been mis-declared to evade the payment of total duty to the tune of Rs.5,63,63,853/-, which includes ADD liability of Rs.4,44,39,031/-. When the offending goods are more than the declared goods, the petitioner cannot claim innocence subsequent to detection by investigating agency, as if it was inadvertently shipped. The request for re-export of the goods concealed cannot be entertained, as they are liable to be confiscated.

4. Mr.S.Baskaran, learned counsel for the petitioner submitted that even though the container contains certain undeclared goods, there is no impediment for the respondents to release the remaining part of the goods which are declared in the Bill of Entry. Therefore, the learned counsel submitted that under the guise of investigation in respect of the offending goods, other goods which are imported by proper declaration cannot be detained by the authorities.

5. On the other hand, the learned standing counsel for the respondents submitted that the offending goods were in fact

concealed in the container, which shows the intention of the importer to import those goods by concealment and for the purpose of evading duty. He further submitted that the proprietor of the petitioner was arrested on last Friday and the investigating is going on and therefore, under the present circumstances, the case of the petitioner for release of the goods cannot be considered.

6. Heard both sides.

7. A simple prayer sought for in this writ petition is for release of the goods declared in the Bill of Entry No.8575624 dated 23.10.2018, except the offending goods. There is no dispute to the fact that the imported container was examined by the officials and it was found that 552 cartons of offending goods were concealed at the back part of it behind and underneath the declared goods. When such being the case of the Revenue and further investigation is in progress, that too, by arresting the proprietor of the petitioner, this Court is of the view that any order passed on the request of the petitioner for releasing the other goods would affect the investigation and further adjudication process and therefore, the petitioner has to only face the investigation and adjudication process, especially, when the allegations made against the petitioner is serious in nature, that about 552 cartons of sewing machine needles were found in excess in the import consignments, which is over and above from the declared goods. As it is now clear that the subject matter goods sought to be released are imported along with offending goods concealed in the same container and that thus, an offence case is made out and the investigation is in progress, I find no reason to entertain and pass any order in this writ petition. Accordingly, this writ petition fails and the same is dismissed. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

mk

To

1. The Commissioner of Customs (Gr.3)
   Chennai II Commissionerate
   No.60, Rajaji Salai, Customs House,
   Chennai-600 001.

2. The Commissioner of Customs (DIU)
Chennai III Commissionerate
No.60, Rajaji Salai, Custom House
Chennai-600 001.

3. The Deputy Commissioner of Customs (Gr.3)
No.60, Rajaji Salai, Custom House
Chennai-600 001.

4. The Deputy Commissioner of Customs (DIU)
No.60, Rajaji Salai, Custom House,
Chennai-600 001.

+1 CC to Mr.K.Magesh, Advocate sr 82522.
+1 CC to Mr.S.Baskaran, Advocate sr 82685.

W.P.No.29380 of 2018

SV(CO)
SP(21/12/2018)