IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.02.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.27 of 2014

M/s.Neoteric Infomatique Limited,
Represented by its Manager - Imports,
Samir Tumdi
Kumaran Rice Mill Compound,
Survey Nos.91 & 92/2,
Thiruvallur High Road, Vellavedu,
Chennai 602 107. .. Petitioner

vs.

1.The Deputy Commissioner of Customs,
Group 5,
Air Customs, New Custom House,
Meenambakkam, Chennai 600 027.

2.The Deputy Commissioner of Customs,
Air Cargo Complex,
Meenambakkam, Chennai 600 027. .. Respondents

Prayer.: Writ petition is filed under Article 226 of the Constitution of India, praying for a writ of Mandamus to direct the 1st respondent to re-assess the goods in Bill of Entry No.8221802 dated 15.10.2012 and further direct the 2nd respondent to refund the amount for the missing pallet within a reasonable time frame.

For petitioner : M/s.S.Derrick Sam and G.Vijayabalan

For Respondents : Mr.P.Rajkumar Jhabakh

O R D E R

This writ petition has been filed seeking for a direction to the 1st respondent to re-assess the goods in Bill of Entry No.8221802 dated 15.10.2012 and to further direct the 2nd respondent to refund the amount for missing pallet within a reasonable time frame.

2. The case of the petitioner is that the petitioner had imported two consignments of external hard disc drive and filed Bill of Entry No.8221802 dated 15.10.2012 for assessment.

3.After assessment and payment of customs duty of Rs.1,92,402/-, when the petitioner’s CHA approached the Airports Authority of India for taking delivery of the goods, the Airport Authority delivered only one package to the petitioner's CHA and informed that the whereabouts of the other pallets was not known.

4. Under these circumstances, the petitioner sent a representation to the Deputy General Manager – Imports Cargo with a request to trace out the missing pallet.

5. Since the imported cargo on which the duty was paid was not traceable, the petitioner made a claim with the insurance. The petitioner also sent a letter dated 20.03.2013 to the 1st respondent to re-assess the goods in Bill of Entry No.8221802 dated 15.10.2012 in order to refund claim of the customs duty paid on the missing pallet. However, there was no response from the 1st respondent.

6. Meanwhile, the surveyor appointed by the insurance company gave a report dated 05.12.2013. In the said report, it was stated that on enquiry from the petitioner, the CHA of the petitioner and the Airports Authority of India found that there were two packages at the time of the import that one pallet was missing due to theft within the Air Cargo Complex in Chennai Airport. The survey report reported the value of the missing pallet as Rs.16,48,920/-.

7. The petitioner sent a letter dated 24.02.2016 to the Assistant Commissioner of Customs (Air Cargo) to re-assess the Bill of Entry in terms of the decision of the Hon'ble Supreme Court in M/s.Priya Blue Industries vs. Commissioner of Customs, 2004 (172) ELT 145 (SC).

8. It is submitted that despite several remainders, there was no response from the 1st respondent. Hence, the petitioner has filed the present writ petition.

9. It is submitted that under Section 13 of the Customs Act, 1962, an importer is not required to pay duty leviable on

any imported goods if they are pilfered after unloading but before the proper officer makes an order for clearance for home consumption or deposit in a warehouse, except where such goods are restored to the importer after pilferage.

10. The learned counsel for the petitioner further submits that as per Section 149 of the Customs Act, the proper officer may, in his discretion, authorise any document, after it has been presented in the custom house to be amended.

11. It is submitted that under Section 149 of the Customs Act, 1962, an amendment to Bill of Entry or Bill of Export or other documents can be allowed on the basis of documentary evidence which was in existence at the time when the imported goods were cleared, deposited or exported. It is submitted that the petitioner is seeking amendment to the bill of entry based on the documents which were in existence at the time of the import due to the theft.

12. The learned counsel for the petitioner submits that the Bill of Entry has to be re-assessed in terms of the decision of the Hon'ble Supreme Court in M/s.Priya Blue Industries vs. Commissioner of Customs, 2004(172) ELT 145 (SC) for the respondents to process the refund claim of the petitioner.

13. The learned counsel for the respondents submits that Section 13 of the Customs Act, 1962 is not applicable in the facts and circumstances of the case, inasmuch as it applies only if any imported goods are pilfered after the unloading thereof and before the proper officer has been made an order for clearance for home consumption or deposit in a warehouse.

14. It is submitted that in this case, the imported goods were assessed for customs duty and was passed for being cleared and therefore Section 13 of the Customs Act, 1962 was not applicable. Therefore, the petitioner was liable to pay Customs Duty. Consequently, there is no question of refunding of the duty.

15. The learned counsel for the respondents cited on the decision of the Tribunal in Commissioner of Customs (Air Cargo), New Delhi vs. Relaxo Rubber Ltd., 2001(ELT) 797 (Tri) to persuade the court to conclude duty was payable and therefore submits that the writ petition was liable to be dismissed.

16. The learned counsel for the respondents further submitted that as per Rule 6(1)(i) of Handling Cargo in Customs Area Regulations, 2009, the onus and responsibility for safe custody of imported goods was with the Airport Authority of India and therefore the liability for all losses due to pilferage including customs duty was on the said authority. It was therefore submitted that the present writ petition was liable to be dismissed.

17. I have considered the arguments advanced by the learned counsel for the petitioner and the respondents.

18. Facts are not in dispute. The imported goods were assessed on 15.10.2012 under Bill of Entry No.8221802. The petitioner paid the customs duty on 15.10.2012 vide challan No.2004701696 through IDBI Bank unaware of the fact that the imported goods were lost after they were assessed to duty.

19. The Airport Authority of India was responsible for safe keeping of the imported goods as per Regulation 6(i) of the Handling Cargo in Customs Area Regulations, 2009. Airport Authority of India was the custodian of the imported goods as per Handling Cargo in Customs Area Regulations, 2009.

20. The imported goods were lost while in the custody of Airport Authority of India after assessment and payment of duty but before they could be physically delivered to the petitioner by the Airport Authority of India.

21. An importer is not liable to pay the customs duty under Section 13 of the Customs Act, 1962, if the imported goods were pilfered after unloading but being ordered to be cleared for Home Consumption or is ordered to be deposited in the warehouse, except where the pilfered goods are restored to the importer after pilferage.

22. Similarly, under Section 23 of the Customs Act, 1962, an imported is entitled for remission of duty the imported goods, if imported goods are lost, destroyed or abandoned otherwise than on as a result of pilferage, at any time, before the clearance of the goods for home consumption. Remission of duty would apply before payment of duty. The expression pilferage has not been defined in the Act. The dictionary meaning of the word pilferage means an act or practice of stealing small quantities or articles since an entire pallet has gone missing it is a cargo of loss of imported goods.

23. If the petitioner had not paid customs duty after assessment of bill of entry on the lost goods, it could have asked for remission of customs duty if it became aware of the theft of the imported goods.

24. Under Section 149 of the Customs Act, 1962 no amendment of a Bill of Entry or shipping bill or Bill of Export is authorised after the imported goods have been cleared for home consumption or deposited in a warehouse, or the export goods have been exported, except on the basis of documentary evidence which was in existence at the time of goods were cleared, deposited or exported, as the case may be.

25. In this case, the amendment sought for is based on the documents that were available before the import. Since the imported lost goods were never cleared, the petitioner was entitled to have the subject Bill of Entry amended for the purpose of refund under Section 27 of the Customs Act, 1962 subject to other safeguards under Section 27 of the Customs Act,1962. Further, to have the refund processed, the Bill of Entry has to be re-assessed, in view of the decision of the Hon'ble Supreme Court in Priya Blue Industries case cited *supra*.

26. Under these circumstances, the present writ petition deserves to be allowed and is accordingly allowed. No cost.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

kkd

To
1.The Deputy Commissioner of Customs,
Group 5,
Air Customs,
New Custom House,
Meenambakkam,
Chennai 600 027.

2.The Deputy Commissioner of Customs,
Air Cargo Complex,
Meenambakkam, Chennai 600 027.

+1cc to Mr.Hari Radhakrishnan, Advocate, S.R.No.8184

W.P.No.27 of 2014

PL(CO)
KM(21/04/2021)