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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT/233/2022
IA NO. GA/1/2022

SHRI PRAVEEN BHADANI, PROP. OF M/S. ARIHANT OVERSEAS
VS.
UNION OF INDIA AND ORS.

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 13TH FEBRUARY, 2023

Appearance :
Mr. Arijit Chakraborty, Adv.
Mr. Nilotpal Chowdhury, Adv.,
Mr. Prabir Bera, Adv.
Mr. Deepak Sharma, Adv.
…for appellant.

Mr.K. K. Maity, Adv.
Mr. Tapan Bhanjan Adv.
…for respondent.

The Court : - This intra-Court appeal by the writ petitioner is directed against the order dated 25.11.2022 in WP 2980 of 2022. The said writ petition was filed praying for issuance of a Writ of Mandamus to the respondents to forthwith issue show-cause notice under Section 124(a) of the Customs Act, 1962 (the Act) for adjudication of the purported seizure for the imported consignment under Bill of Entry no. 5387704 dated 10.09.2021; for a further direction to forthwith release the imported goods covered under the said Bill of Entry; for issuance of a Writ of Certiorari to quash the purported seizure of the imported goods and for a Writ of Prohibition for withholding the goods imported by the appellant. The learned Single Bench by the impugned order dismissed the writ petition on the ground that a detailed order has been passed by the Joint Commissioner of Customs, Assessing Group III, Custom House, Kolkata dated 29.3.2022 ordering for provisional release of the seized consignment subject to compliance of conditions contained in the said document and, therefore, the learned Writ Court was not inclined to entertain the writ petition and the same was dismissed. Aggrieved by such order the appellant is before us by way of this appeal.

Heard learned Counsel for the either side.

The appellant had approached the learned Writ Court for issuance of a show-cause notice under Section 124(a) of the Act and for release of the seized consignment. According to the appellant the conditions imposed in order to provisional release dated 29.3.2022 was onerous, more particularly when the differential duty amount as determined by the department at Rs.46,48,200/- had been fully paid by the appellant. Thus the appellant's contention was that the goods should be released and a direction should be issued to the authorities to issue show-cause notice under Section 124(a) of the Act. When this appeal was heard earlier this Court was of the prima facie view that the appellant having paid the entire differential duty certain reasonable conditions can be imposed so that the goods can be released as no useful purpose would be served by tendering the goods more particularly when the goods are in prohibited items. Accordingly, a direction was issued to the department to give necessary instruction to the learned standing Counsel appearing for the respondent. In terms of the said direction written instruction dated 12.2.2023 has been given. In the said instruction it has been stated that the bank guarantee has to be furnished by the appellant for the amount which has been mentioned in the order of provisional release and this condition is in consonance with the Circular No. 35/17- Customs dated 16.8.2017, issued by the Central Board of Excise and Customs (anti smuggling unit). The Court in its earlier order also directed the department to respond as to within what timeframe the show-cause notice can be issued to the appellant. In such a query separate instruction has been given dated 10.2.2023 setting out certain reasons as to how the department at this juncture may not be in a position to issue a show-cause notice as the key person one Vineet Goel, who had been arrested, remanded to judicial custody, subsequently enlarged on bail and an application for cancellation of bail is being heard by the Chief Judge of the City Sessions Court, there would be difficulty for the department to issue the show-cause notice to the appellant.

On the first issue as to whether the goods should be any longer detained, we find that in the order of provisional release dated 29.3.2022 the respondent department has accepted the fact that the appellant has paid the entire differential duty of Rs.46,48,200/-. After taking note of the said payment in the order the appellant has been directed to execute a bond for the estimated value of the goods namely Rs.81,95,532/- and to submit a bank guarantee for a sum of Rs.90 lakh. So far as the full estimation of the goods is concerned, since the differential duty has already been estimated it may not be necessary for the appellant to execute a bond for the fully estimated value of the goods as estimated in the order dated 29.3.2022. So far as the submission of bank guarantee of Rs. 90 lakhs the order of provisional release does not state as to how the said quantification has been made. However, from the letter of the Assistant Commissioner of Customs & Port – Commissionerate Calcutta dated 12.2.2023 we find that the said amount of Rs.90 lakhs is the probable duty amount of fine and penalty. The probable duty amount is the differential duty as already been quantified and paid by the appellant namely a sum of Rs.46,48,200/-. Therefore, the said amount needs to be subtracted from the amount directed to be secured by way of bank guarantee.

Even after giving credit to the sum of Rs.46,48,200/-, it is not clear from the order of provisional release or the communication dated 12th February, 2023 as to how the balance amount has been computed. In any event, the goods are lying with the Customs from 10th September, 2021 and the goods are stated to be readymade garments/apparels. Thus, the differential duty having been paid, the department does not gain in keeping the goods detained any longer.

Thus, we are of the considered view that a workable order should be passed so that the interest of revenue is protected, at the same time, the appellant importer is also able to clear the goods.

So far as the issuance of the show cause notice is concerned, if in the opinion of the respondent department, the case of the appellant can be split up from that of Vineet Goel, then nothing prevents the respondent department from issuing a show cause notice under Section 124(a) of the Act. However, this we leave it to the discretion of the department with a note of caution that issuance of show cause notice should not be unduly delayed, especially when the allegation of the department against the appellant is that earlier consignments might also have been grossly misdeclared.

In the result, the appeal is disposed of by directing the respondents to release the subject goods subject to the appellant furnishing a bond for a sum of Rs.90,00,000/-. The goods shall be released within a period of seven days from the date on which such bond is furnished.

With regard to the issuance of the show cause notice, as observed earlier, if in the opinion of the respondent department the case of the appellant can be split up from that of the case of Vineet Goel, then it will be open to the department to issue show cause notice under Section 124(a) of the Act to the appellant. In the event, such course is feasible of being adopted by the department, the department shall endeavour to issue show cause notice at the earliest, preferably within a period of two months from the date of receipt of this order.

Mr. K.K. Maiti, learned standing counsel for the respondent department, submitted that in the event fresh material emerges after conducting further enquiry on Vineet Goel, the department should be at liberty to issue a supplementary show cause notice. If the statute provides for such a contingency, it will be well open to the department to do so, for which no separate liberty is required to be granted by this Court and all that can be observed is that action initiated by the department should be in accordance with law.

It is made clear that this order has been passed considering the peculiar facts and circumstances of the case and not to be treated as a precedence.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

Pkd/GH/SN/S.Pal.