

(2012) 07 P&H CK 0269

High Court Of Punjab And Haryana At Chandigarh

Case No: CWP No. 8148 of 2012

M/s Shilpi Crafts

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision: July 18, 2012

Acts Referred:

- Constitution of India, 1950 - Article 14, 19(1)(g), 226, 227
- Customs Act, 1962 - Section 110A, 47

Hon'ble Judges: G.S. Sandhawalia, J; Ajay Kumar Mittal, J

Bench: Division Bench

Advocate: Saurabh Kapoor, for the Appellant; D.D. Sharma, Advocate, for respondent Nos.1 and 3 and Mr. Kamal Sehgal, Advocate, for the Respondent

Judgement

G.S. Sandhawalia, J.

The present writ petition filed under Articles 226 & 227 of the Constitution of India (which was amended subsequently) prays for issuance of a writ in the nature of mandamus or certiorari for quashing of seizure/provisional release memos dated 01.07.2011, 12.09.2011, 17.10.2011, 18.11.2011, 02.12.2011, 17.01.2012, 23.02.2012, 27.02.2012, 12.03.2012 & 17.03.2012 and directing the respondents to release the imported goods comprising of flat bed/circular knitting machines and declaring the action of the respondent authorities for with-holding the imported goods being illegal, arbitrary, mala fide and violative of Articles 14 & 19(1)(g) with further alternative relief of fixing the amount of demurrage/detention charges and compensation for delay in releasing the goods or such order or direction which this Court may deem fit in the circumstances of the case. The pleaded case of the petitioner is that during the period from July, 2011 to December, 2011, it had imported 6 consignments of old & used Flat bed/circular knitting machines with standard accessories for which there are entries at the port of Inland Container Depot-Punjab State Warehouse (ICD-PSWC), Ludhiana. Upon arrival of the goods, the petitioner filed the bills of entries No. 3920965 dated 28.06.2011, 3920963 dated

28.06.2011, 4133390 dated 21.07.2011, 4538168 dated 03.09.2011, 4720342 dated 23.09.2011 and 4721810 dated 23.09.2011 for clearance of the said consignments under Customs Tariff Heading-84472090 and Central Excise Tariff Heading-84472090 declaring the value and other particulars as per the information supplied on the import documents supplied by the foreign supplier.

2. On 01.07.2011, the officers of the Directorate of Revenue Intelligence, Regional Unit, Ludhiana raided the office, residential and godown premises of the petitioner and nothing incriminating was found against the petitioner who was out of the country. The officers sealed the residential premises of the petitioner and detained 88 machines lying in the 3 godown premises which were later seized by the panchnama dated 01.07.2011. In addition to it, respondent No. 3 had also seized 3 old & used machines along with electric panel and 2 pieces of electric plates. The petitioner was informed regarding the search by his staff and after returning back to India, the petitioner requested for seal cutting of the residential premises and examination of the machines detained at the port of ICD Ludhiana. The process of seal cutting of the residential premises was done on 11.07.2011 and nothing incriminating was found against the petitioner and the IEC of the petitioner was put under alert by the officers of Directorate of Revenue Intelligence, Ludhiana and all the machines imported from 28.06.2011 to 23.09.2011 were detained vide panchnama of the said date. The machines imported by the importer vide different bills of entries were subject to examination by the officers of DRI and it was found that the same were declared by the petitioner and the Department took the opinion of Chartered Engineer, Varun Chandok and Rajesh Jhon who submitted their reports to the DRI. Out of the total 26 machines imported by the petitioner, 3 machines along with accessories had been placed under seizure and out of the total 88 detained machines, 10 machines were released vide letter dated 02.12.2011 and 55 machines had been placed under seizure vide letter dated 17.01.2012.

3. The petitioner had requested the respondents to lift the detention of the machines detained vide panchnama dated 01.07.2011 since the same had been cleared by officials of the Customs Department after examination and proper assessment of the Customs Duties u/s 47 of the Customs Act, 1962 (hereinafter referred to as the "Act") whereas the petitioner was coerced to deposit Rs. 15,00,000/-vide demand drafts on the pretext that the machines shall be released upon making such deposits but the respondents had not released the goods. Accordingly, seizure memos dated 01.07.2011, 12.09.2011, 17.10.2011, 18.11.2011, 02.12.2011, 17.01.2012, 23.02.2012, 27.02.2012, 12.03.2012 & 17.03.2012 were challenged. The petitioner had thereafter regularly been requesting for the release of the machines and the respondents vide its letter dated 23.02.2012, 27.02.2012, 12.03.2012 & 17.03.2012 had ordered for provisional release of the machines subject to certain conditions wherein bank guarantee with auto renewal clause had to be submitted and a declaration had to be given in the form of an affidavit that the identity of the goods would not be challenged during the course of adjudication.

4. Respondent No. 3, in its reply, took the plea that 6 live consignments containing 26 machines and 2 spares in 6 containers had been detained. The detention of 3 machines and 2 spares had been converted into seizure whereas 23 machines had been released to the petitioner after provisional assessment. The respondents had issued no objection certificates for provisional release u/s 110A of the Act in respect of the 3 machines and 2 spares seized at the Port as well as 55 machines seized in the petitioner's godown and the petitioner had an alternative remedy under the Act which had not been availed and neither the petitioner represented against any of the seizure or detention of the goods to the respondents and provisional release had been ordered by the Joint Commissioner. It was pleaded that the petitioner had himself deposited a sum of Rs. 5,00,000/- vide letter dated 14.09.2011 towards differential duties against 5 machines of Shima Seiki brand and thereafter, submitted 2 post dated cheques for Rs. 10,00,000/- which were deposited towards payment of differential duty against import of old and used Flat Bed Knitting Machines. The petitioner, vide letter dated 22.11.2011, submitted a demand draft of Rs. 10,00,000/- towards deposit against the demand raised, if any, against it in future and requested to return one of the cheque submitted on 04.10.2011 which was returned. The plea of alternative remedy was also raised by the respondents that the petitioner had the remedy u/s 110A of the Act.

5. Counsel for the petitioner has restricted his relief to the condition Nos.(iii) & (iv) of the provisional release orders issued by the respondents vide letters dated 23.02.2012, 27.02.2012, 12.03.2012, 16.03.2012. The said conditions reads as under:

(iii) On furnishing bank guarantee of an amount of Rs.21,00,000/- with an auto renewal clause. The Bank Guarantee amount has been determined so as to cover the penalty and redemption fine in the event, the case is decided against you at the adjudication stage (Rs.21,00,000/- = redemption fine being approximately 15% of the value of the seized goods + penalty amount equal to the differential duty sought to be evaded). It is clarified that auto renewal clause means that the bank guarantee should contain a clause to the effect that it will be renewed from time to time without any request from the Customs Department unless that it will be renewed from time to time without any request from Customs Department unless the same is not released by the department. (iv) On furnishing a declaration in the form of an affidavit that you will not challenge the identity of the goods during the course of adjudication or prosecution proceedings if any.

6. Counsel for the petitioner has also placed reliance upon various decisions wherein such conditions imposed by the respondents had been quashed. Reference was made to a Division Bench judgment of this Court rendered in *Amit Enterprises Vs Union of India* 2011 (269) E.L.T. 314 (P & H). The relevant observations of the Division Bench reads as under:

11. We find merit in the contention that requirement of giving a declaration that the petitioner will not challenge the value of the goods, is unreasonable and arbitrary.

The petitioner cannot be debarred from asserting its version as to the value and classification of goods. If such a condition is allowed to be imposed, the department can unilaterally allege any valuation and continue to keep the goods under detention unless the affected party agrees to withdraw the challenge to the valuation. This will amount to denial of justice. Similarly, requirement of furnishing bank guarantee equal to 25% of the full market value of the seized goods is also, in the facts and circumstances of the case, arbitrary. Mere fact that condition of 10% of bank guarantee was upheld by this Court in T.L.Verma and M/s Kundan Rice Mills cannot be justification to impose such conditions in each and every case. In those cases, this Court was satisfied that the importers had adopted fraudulent tactics which, prima facie, justified opinion for confiscation of goods. The said judgments cannot apply to every case of detention. Mere allegation of liability to confiscation is not enough. Circumstances and grounds justifying opinion about liability to confiscation is open to judicial scrutiny.

The said view was followed in Era International Vs. Union of India 2011 (274) E.L.T. 6 (P & H) wherein also, similar conditions imposed regarding furnishing of bank guarantee and declaration as a condition for release of goods was set aside by this Court with the under-noted observations:

7. Similar matter has been earlier dealt with by this Court on 9.5.2011 in CWP No. 6732 of 2011 Amit Enterprises v. Union of India 2001(269) ELT 314 and it was held that prima facie there was violation of judgment of the Hon"ble Supreme Court in [Commissioner of Customs Vs. Sayed Ali and Another](#), laying down that seizure can be effected only by an officer specifically authorized to act as such. In the present case, no such authority has been produced by the officer effecting seizure. It has also been held that imposition of a condition to the effect that the value of goods will not be challenged at any stage, is abuse of power, as no person can be debarred from asserting its case. It has been further held that requirement of furnishing bank guarantee equal to 25% of the full market value of the goods could not be justified on a simple dispute of classification and valuation. It has also been held that gross delay in taking decision after seizure without any valid justification was arbitrary. Mere dispute of classification or valuation could not justify power of confiscation and imposing of condition of furnishing of bank guarantee equal to 25% of the value of the goods. The said C.W.P. No. 13131 of 2011 5 judgment is not shown to be distinguishable in its applicability to the present case.

8. Accordingly, we allow this petition and direct immediate provisional release of goods on conditions mentioned in the order of provisional release except the requirement of declaration that the petitioner will not dispute the value of goods and will furnish bank guarantee. In respect of second consignment, the release will be on payment of customs duty as per valuation of the chartered engineer. It is, however, made clear that this order will not affect merits of the controversy to be adjudicated upon in accordance with law.

7. The submission made by the counsel for the respondents that an appeal would lie to the Commissioner (Appeal) against the said orders and this Court should not exercise its jurisdiction under Articles 226 & 227 of the Constitution of India, is not acceptable in view of the fact that the detention of the goods has been made since 01.07.2011 onwards and the conditions imposed by the Joint Commissioner are in violation of the directions issued by this Court in Amit Enterprises(supra) & Era International(supra). Therefore, in our opinion, the alternative remedy is not an efficacious remedy to which the petitioner can be relegated to. The law laid down by this Court could not be distinguished by the counsel for the respondents; and accordingly, keeping in view the said settled position, the orders of provisional release imposing condition Nos.(iii) & (iv) as reproduced above, are held to be bad and are hereby quashed. The respondents are directed to release the goods to the petitioner within a period of 2 weeks from the receipt of the certified copy of this order after ignoring the conditions imposed in Clause (iii) & (iv). It is, however, made clear that this order will not affect merits of the controversy to be adjudicated upon in accordance with law.