

(1991) 09 CAL CK 0028

Calcutta High Court

Case No: Matter No. 1851 of 1986

Govind Ram Agarwal

APPELLANT

Vs

Collector of Customs

RESPONDENT

Date of Decision: Sept. 26, 1991

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (1992) 60 ELT 535

Hon'ble Judges: Padma Khastgir, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Padma Khastgir, J.

In this writ petition under Article 226 of the Constitution Govind Ram Agarwal has prayed for issuance by a rule, in the nature of mandamus commanding the respondents Collector of Customs and Union of India to refund a sum of Rs. 13,53,169.03 stated to be excess amount of duty of customs realised from the petitioners and also for an injunction restraining the respondents from cancelling the personal bonds, in respect of 17 consignments. The petitioner imported during the period February 1985 to September 1985 30 consignments of low carbon defective CRCA coils, G.I. Sheets, tin plate secondaries etc. etc. from the port of Antwerp to Calcutta. Upon arrival the 28 consignments goods were examined by the appraisal of Calcutta Customs. The price in respect of the said 28 consignments has been paid by the petitioner. In the bills of entry the petitioner stated that they have mentioned the correct value as per invoice value. The petitioners contended that without notice to the petitioner the Customs Officer enhanced the assessable value and arbitrarily assessed those bills of entry "On the ground ascertained value" and imposed provisional assessment of duty in respect of 17 consignments out of the said 28 consignments. The Customs Officer refused to release the said consignments unless the customs duty so far assessed were paid by the petitioner.

In view of the excessive high rate of demurrage per day and to avoid such liability towards demurrage charges, the petitioner contended that it had no alternative but to deposit the duty of customs. The petitioners contended that neither there was any chemical test nor any material disclosed as the basis of assessment of the said consignments at such higher rate than the invoice value. Final assessment has not yet been made. The petitioner contended that the invoice value should be accepted as the assessable value and the excess amount paid by the petitioner be refunded. Hence the present writ petition had been filed for necessary order of refund.

This application appears to be not maintainable inasmuch as the rules framed by this High Court under Article 226 of the Constitution has not been complied with. From the affidavit filed on behalf of Gopalswami Sampath, the Assistant Collector of Customs affirmed on 8th January 1987 it indicates that the petitioner has suppressed material facts and guilty for such gross suppression of material facts. Hence, the petitioner could not pray for the reliefs on that ground alone. From the averments made in such affidavit it indicate that there, are disputed question of facts which cannot be gone into and finally decided by way of writ petition. The alternative remedy available under the Customs Act has not yet been complied with nor any explanation has been given as to why the petitioner has abandoned the regular course of preferring an appeal if aggrieved by such provisional assessment order. In respect of some of the consignment the final assessment have been made, the petitioner have not taken any steps in respect of the same. But accepted such assessment but chosen to dispute the provisional assessment when no final order has yet been passed. The value declared in the invoices were erroneous and not acceptable to the Customs Authorities. Those provisional assessment were made against P.D. Test Bonds u/s 18 of the Customs Act read with Customs (Provisional Duty Assessment) Regulation, 1963. Those provisional assessment in respect of 9 consignments u/s 18 of the Customs Act against P.D. Test Bond require further enquiries for the purpose of ascertaining the correct value and assessment u/s 14 of the Customs Act. Although there have been delay, undoubtedly, in making the final assessment, but are there any statutory limits prescribed for finalisation of provisional duty bonds executed u/s 18 of the Customs Act read with relevant customs regulations? The petitioner itself has amended the value for the purpose of enhancement and at no point of time he raised any objection to such enhancement of value either orally or in writing. Nor did he demand any personal hearing. The goods did not confirm to the description given in those invoices nor did the petitioner mention the correct value in the different bills of entry. There was no compulsion. The petitioner deposited on his own and such deposits were not made under protest. The Customs Authorities imposed the duty u/s 14 of the Customs Act on the basis of evidence of value as declared by other importers during the relevant period in respect of importation of identical goods. The petitioner neither demanded any personal hearing nor presented any petition or registered any protest being fully aware of the facts and circumstances of the case which led to the

enhancement of the value. He himself amended such value on all the copies of the bills of entry.

2. Under those circumstances, there being no merit to this application. The petitioner is not entitled to relief as prayed for.

Under those circumstances, this application is dismissed.

Interim order if any is vacated.