(2018) 01 MAD CK 0514

MADRAS HIGH COURT

Case No: 765 and 1114 of 2018 and W M P Nos 929 to 931, and 1381 of 2018

Isha Exim		APPELLANT
	Vs	
The Additional Director General & Ors		RESPONDENT

Date of Decision: Jan. 18, 2018

Acts Referred:

- Customs Act, 1962, Section 110(1) - Seizure of goods, documents and things

Hon'ble Judges: T.S.Sivagnanam

Bench: Single Bench

Advocate: S. Krishnanandh, V. Sundareswaran, B.Rabu Manohar

Final Decision: Disposed Off

Judgement

1. Heard Dr. S. Krishnanandh, the learned counsel appearing for the petitioner, Mr.V.Sundareswaran, the learned Senior Standing Counsel,

accepting notice on behalf of respondents 1 and 2 and Mr.B.Rabu Manohar, the learned Senior Panel Counsel, accepting notice on behalf of

respondents 3 and 4. Since the issue involved in both Writ Petitions and the parties are one and the same, with consent on either side, both the

Writ Petitions are taken up for disposal.

2. Writ Petition No.765 of 2018, has been filed, seeking for issuance of a writ of certiorari, to quash the drawal of Mahazar, dated 18.12.2017

and detention of the goods imported, vide Bill of Entry, No.4146612, dated 25.11.2017, as being contrary to the Advance Ruling, dated

31.03.2017.

3. The other Writ Petition, i.e. W.P.No.1114 of 2018 has been filed, seeking to quash the order passed by the second respondent, which is a

seizure memorandum, dated 11.01.2018, where, the goods imported by the petitioner have been seized on the alleged grounds of misdeclaration,

resulting in a wrong classification of the goods, under the Customs Tariff Act, 1975.

4. The petitioner imported 27,000 kgs of goods, classified as ''unflavoured supari'' from Indonesia, vide Commercial Invoice, dated 20.07.2017,

at US dollar 48600. The goods arrived at Chennai Port, and the petitioner filed a Bill of Entry, No.0945982, dated 28.07.2017, for clearance of

the aforesaid goods. The goods were assessed to duty and out of charge was accorded in respect of the said Bill of Entry, under Customs Tariff

Heading (CTH) 21069030 as ''unflavoured supari''. However, the Officers of the Directorate of Revenue Intelligence (for short, D.R.I.) did not

permit the cargo to be cleared, inspite of order of out of charge. The petitioner is stated to have paid applicable duties, vide Chellan, dated

09.08.2017. The Officers of the D.R.I. alleged that the petitioner mis classified the goods and conducted examination of the goods and also

recorded the statements, vide Mahazar, dated 10.08.2017.

5. The petitioner''s case rests upon the Advance Ruling obtained by them from the Authority for Advance Ruling under the Central Excise,

Customs and Service Tax, dated 31.03.2017, wherein, the Authority, after considering the objections of the Commissioner of Customs (Chennai -

II), held that the goods, viz., ''unflavoured supari'', ''flavoured supari'', ''API supari'' and chikni supari'', being processed betelnut products, which

do not contain specified ingredients, viz., lime, katha and tobacco but containing other flavouring material/additives are classifiable under Customs

Tariff Heading 2106 90 30. Be it noted that, when the Advance Ruling Authority called for remarks from the Commissioner of Customs, Chennai -

II, vide letters, dated 13.05.2016 and 29.09.2016, the Commissioner of Customs, sent a reply on 25.10.2016, stating that, the products, viz., the

betel nuts imported by the petitioner should ordinarily be covered under CTH 2106 90 30, classified as ''supari''. Therefore, the Commissioner of

Customs, stated that, the query raised by the petitioner before the Advance Ruling Authority may be answered in the affirmative that the products

shall be covered under Chapter 21 and not under Chapter 8 of the Customs Tariff Act. In spite of the petitioner, being armed with the order

passed by the Advance Ruling Authority, the consignment imported by the petitioner has been detained, Mahazar has been recorded and

subsequently, the impugned seizure memorandum has been issued.

6. It has to be considered as to whether the Officers of the D.R.I., especially, in the rank of the Senior Intelligence Officer can act against the

Advance Ruling issued by the Advance Ruling Authority.

7. The learned Senior Standing Counsel for the Revenue would contend that the Department is in the process of challenging the Ruling passed by

the Advance Ruling Authority, dated 31.03.2017, and therefore, the learned Senior Standing Counsel submits that, there are certain reservations

for the Department to adopt such Ruling.

8. The above submission on behalf of the Revenue is liable to be rejected for more than one reasons. Firstly, the competent Authority, viz., the

Commissioner of Customs, Chennai -II, has, in no uncertain terms, stated that the products imported by the petitioner are covered under Chapter

21 and not under Chapter 8 of the Customs Tariff Act, in his reply to the Advance Ruling Authority, dated 25.10.2016. Therefore, the

respondents, especially, the Senior Intelligence Officer (second respondent) cannot take a stand, contrary to what has been taken by the

Commissioner of Customs, Chennai - II, before the Advance Ruling Authority. That apart, the Advance Ruling Authority has ruled in favour of the

petitioner and the appropriate classification has been held to be CTH 2106 90 30. In such circumstances, it has to be seen as to whether the

impugned proceedings are justified or not.

9. The Government of India, Ministry of Finance (Department of Revenue), Authority of Advance Rulings, Customs and Central Excise, has issued

a circular, which sets out a scheme of Advance Ruling and the matters incidental and connected therewith. The benefits of obtaining the Advance

Ruling has been explained, apart from other things to state that, seeking an Advance Ruling is an inexpensive benefit and the procedure is simple

and expeditious. The question, on which, Advance Ruling could be sought for, includes, i) classification of any goods under the Customs Tariff Act,

1975, ii) Applicability of notification issued under sub-section (1) of section 25 of the Customs Act, bearing on the rate of duty. So far as the

binding nature of the Advance Ruling is concerned, it has been held that the Advance Ruling pronounced by the Authority would be binding on the

applicant, who sought it, in respect of the question raised in the application, and on the Commissioner of Customs, Central Excise and Service Tax,

as the case may be and the Authorities, subordinate to him, in respect of the applicant, unless, there is a change in law or facts on the basis, of

which, the Advance Ruling has been pronounced.

10. The Hon''ble Supreme Court, in the case of Columbia Sportweare Co. Vs. Director of Income Tax, Bangalore, reported in [(2012) 283

E.L.T. 321 (S.C.)] has held that, the determination of the Advance Ruling Authority is not just advisory, but binding. Thus, the respondents cannot

take a stand contrary to the Advance Ruling given to the petitioner, vide order, dated 31.03.2017. The contention that, the Department is in the

process of challenging the same, is not borne out by any records, and even assuming that, there is a proposed challenge, unless, there is

stay/injunction granted by the Competent forum, before which, the Advance Ruling passed by the Authority for Advance Ruling is challenged, the

same continues to bind the applicant (petitioner in this case) as well as Officers functioning under the respondents. The interpretation sought to be

given by the respondents, in the impugned Seizure Memorandum, is clearly contrary to the finding rendered by the Advance Ruling Authority. I find

that the respondent has invoked Section 110 (1) of the Customs Act for seizing the goods. Section 110 (1) of the Act deals seizure of goods,

documents and things. Sub-Section (1) of Section 110 states that, if the proper Officer has reasons to believe that, any goods are liable to

confiscation under the Customs Act, he may seize such goods.

11. Thus, the primordial requirement before an order of seizure is passed is that, the proper Officer has to have reason to believe that the goods

are liable to confiscation. I find that, no such reasons are explicit in the impugned seizure memorandum, dated 11.01.2018, except, to rely upon a

report stated to have been obtained from M/s. Arecanut Research and Development Foundations, Mangalore, which appears to be a private

Organization, and not a accredited Laboratory by the Central Government. Thus, without recording the reasons that the goods are liable for

confiscation, the second respondent could not have passed the impugned seizure memorandum.

12. The Hon''ble Division Bench of High Court of Delhi, in the case of Worldline Tradex Pvt. Ltd., Vs. Commissioner of Customs (Import)

reported in [(2016) 340 E.L.T. 174 (Delhi), considered the scope of Section 110 of the Customs Act, and held that the power of seizure under

Section 110 of the Act has to obviously, be exercised for valid reasons. The proper officer has to record his reasons to believe that the goods, that

he proposes to seize, are liable to confiscation. The said reasons for exercise of the power have to be recorded, prior to the seizure.

13. In the instant case, the seizure memorandum of the second respondent only refers to the test report of the Private Organisation and not a

Central Laboratory to state that the correct classification of goods is CTH No.08028090. Thus, the finding of the second respondent, though

prima facie in nature, is clearly contrary to the order/Ruling passed by the Advance Ruling Authority, dated 31.03.2017 as well as the stand by the

Commissioner of Customs, in his reply to the Advance Ruing Authority, dated 25.10.2016. Thus, the impugned seizure memorandum and the

detention of the cargo by the respondents is wholly unjustified.

14. For the above reasons, the impugned seizure memorandum, dated 11.01.2018 is quashed and the respondents are directed to release the

cargo in question, forthwith, on production of a copy of this order, as the petitioner has already paid the duty, vide chellan, dated 09.08.2017.

15. The learned counsel appearing for the petitioner submitted that, since the goods were detained at the instance of the D.R.I., they are entitled

for Demurrage and Detention Certificate for waiver of the warehousing and demurrages from the date of detention till the date of release of the

goods. It is pointed out that, on an earlier occasion, the petitioner has approached this Court, by way of W.P.No.22114 of 2017, seeking for

release of the same product, which was imported vide Bill of Entry No.2696680, dated 02.08.2017 and detained vide Mahazar, dated

10.08.2017. The said Writ Petition was disposed of, by this Court, by order, dated 12.09.2017, directing the Authority to provisionally assess the

Bill of Entry and release the goods and a direction was issued to the Commissioner of Customs to issue Detention Certificate. It appears that,

though the Detention and Demurrage Certificate was issued, yet, the Steamer Agent did not honour the certificate and the petitioner has paid

demurrages and container detention charges, without prejudice to their rights to contest the same in other legal proceedings.

16. It is not known, as to why, action was not initiated against the Steamer Agent for not complying with the order qua certificate passed/issued by

the Customs Department, and therefore, this Court is inclined to observe that the Customs Department should also ensure that whether the

Detention Certificate issued for waiver of the warehousing and demurrages has been complied with in letter and spirit and should not be reduced

into a paper order. In the decision rendered by the Hon''ble Division Bench of High Court of Delhi, in the case of Worldline Tradex Pvt (supra), it

was held that D.R.I was responsible to bear the charges.

17. Considering the facts of the present case, the respondents 2 to 4 are directed to issue Demurrage and Detention Certificate for Waiver of

Warehousing, Demurrage and Container Charges and ensure that such order is complied with by the Steamer Agent and Container Terminal, as it

was held by the High Court of Delhi, in the case of Worldline Tradex Pvt (supra) that, detention having occurred due to illegal action of D.R.I.,

they have to bear responsibility in that regard.

18. In the result, W.P.No.765 of 2018 is disposed of and W.P. No.1114 of 2018 is allowed on the aforesaid terms. No costs. Consequently,

connected Writ Miscellaneous Petitions are closed.