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Court : Kolkata

Decided On : Sep-17-1993

Reported in : 1994(71)ELT356(Cal)

Judge : Ruma Pal, J.

Appeal No. : Matter No. 2453 of 1993

Appellant : Shiv Kumar

Respondent : Collector of Customs

Advocate for Pet/Ap. : Bhasker Sen and ;Hasmukh Kundalia, Advs.

Judgement :

Ruma Pal, J.

1. The petitioner imported Ball Bearings from China which arrived in Calcutta on 14th May, 1993. The bill of entry was submitted by the petitioners for processing to the Customs Authorities on 2nd July, 1993. On 6th July, 1993 an order was passed by the Assistant Collector to the following effect:

'The goods are Ball Bearings of Chinese origin shipped from Hong-Kong. The party has furnished a PD bond for 100% SS Value pending finalisa-tion of valuation aspect as per the existing practice of the group with may please be accepted. The bill of entry is assessed with 20% additional provisional duty on total ad valorem duty and put up for approval'. Subsequent to this order being passed on 12th July, 1993 the same officer scored out the date of his previous order and made the following endorsement on the bill of entry :-: 'S/A please open 5% cases covering all of the items in presence of AC (Docks) and S.I.B. Officer for approval and check declaration. Detain the goods'

2. The 5% of the cases were opened on 26th July, 1993 as directed. Samples were drawn and fowarded to the S.I.B. for inspection whether the goods are other than Deep Groove Ball Bearings as declared by the party. It was stated that this could not be ascertained since the party/clearing agent failed to produce any catalogue. On 21st August, 1993 a catalogue was produced by the petitioners and on 25th August, 1993 the bill of entry was assessed by the Officer who had previously assessed the goods on 6th July, 1993. The order reads as follow:

3. 'The B/E is assessed as per the orders of the Additional Collector in File No. 560 (5) 27/92A'. There is no dispute that the provisional assessment was made on the basis that the Ball Bearings imported by the petitioner were Ball Bearings other than Deep Groove Ball Bearings. In spite of that the respondent authorities have not released the petitioner's goods. The petitioner has produced various catalogues before this Court to show that the goods imported by the petitioner were not Deep Groove Ball Bearings. The importance of whether the ball bearings are deep groove ball bearings or not is that the customs duty in respect of deep groove ball bearings is much higher than the other ball bearings.

4. It is not necessary for this Court to consider the force of the catalogues produced by the petitioner. The respondents have also relied upon the catalogue produced by the petitioner to contend that the products imported by the petitioner were in fact deep groove ball bearings. There seems to be some confusion on the issues. Whatever the confusion may be, it is not in dispute that having considered the catalogue, the provisional assessment order dated 25th August, 1993 was made in accordance with the order of the Additional Collector. No subsequent order has been passed. This is not to say that the respondent authorities cannot initiate proceedings against the petitioner if they are so advised for any alleged misdescription but they cannot detain the goods in view of the order dated 25th

August, 1993.

5. Accordingly, I dispose of the writ application by directing the respondent authorities to release the ball bearings to the petitioner in terms of the order datd 25th August, 1993 subject to furnishing such security as may have been specified in that order by the respondent authorities. This order of release will not operate as a bar to the respondent authorities either initiating adjudication proceedings against the petitioner or final assessing the petitioners case or merits.

6. As no affidavit in opposition has been used it is recorded that the allegations contained in the petition are not admitted.

7. All parties concerned to act on the signed copy of this dictated order on the usual undertaking.