(2009) 11 GUJ CK 0023

In the Gujarat High Court

Case No : Special Civil Application No. 4137 of 2001

Aasu Plastics Pvt. Ltd. APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 09-11-2009

Acts Referred:

Citation : (2010) 258 ELT 54

Hon'ble Judges : S.R. Brahmbhatt, J;Bhagwati Prasad, J

Bench : Division Bench

Advocate : Trivedi and Gupta, for the Appellant; Asim J. Pandya, Suman Khare and Varun K. Patel, for the Respondent

Final Decision : Dismissed

Judgement

Bhagwati Prasad, J.—The present Special Civil Application has been filed against the notice issued by the Excise and Customs Department Vapi, The case of the petitioners in the present petition is that the petitioner company applied on 5th October 1996 for conversion of its factory in Domestic Tariff Area into 100% EOU for manufacture and export/deemed export of Recycled Granules of Plastic. Pursuant to the said application of the petitioners, Secretariat for Industrial Approval, New Delhi granted Letter of Permission to the petitioner company for conversion of its unit into 100% EOU.

2. The petitioner company imported plastic waste and nylon waste under Bills of Entry Nos. 5539 and 5467 dated 24th November 2000, which were subject to 100% examination by Special Investigation and Intelligence Branch (SIIB) at Mumbai Customs Port, headed by respondent No. 3. The samples drawn therefrom were sent to IIT, Mumbai for testing.

3. However, the Deputy Superintendent of Central Excise, Division-II, Vapi along with other officers of Central Excise Department visited the factory premises of the petitioner company and seized the goods under Panchnama. Thereafter, the Commissioner of Central Excise and Customs, Surat issued the impugned show-

cause notice against the petitioner company against which the present petition is filed.

4. Heard learned Counsel for the parties. Learned Counsel for the appellant stated that the notices were without jurisdiction and has relied upon the decisions of the Supreme Court in the case of Union of India (UOI) and Others Vs. Ram Narain Bishwanath and Others, and Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others,

5. The goods were imported at Bombay Port and at Bombay Port it is alleged that the Customs Authorities have examined the material and in that examination it is revealed that the goods are not of what it was stated in the Letter of Permission to import. Therefore, the writ petition is sought to be held maintainable and the same being against a notice which was issued without jurisdiction.

6. Learned Counsel for the respondents, per contra, submitted that entire Customs and Excise Department at Vapi have jurisdiction to make inspection and the goods were seized under the reasonable belief that the items were not being waste and scrap and that the description of the goods shown on some of Bills of Entries did not tally with the description on the date of the factory visit. He further submitted that the inspection that was made at Mumbai Port was made only superficially. That superficial inspection has led into condoning the act of the petitioners, which is not correct because, a detailed examination was held at Vapi wherein it was found that the goods were not which were sought to be permitted to have been imported. The case of the petitioners is that they are 100% EOU and they were issued Letter of Permission, but that permission does not include Synthetic Grade Nylon waste and they are not entitled to duty free importation. He further submitted that the petitioner is under the physical control of Central Excise authorities and the permission granted by the Special Investigation and Intelligence Branch (SUB) at Mumbai Customs Port, headed by Customs Department would not be sufficient to take a stand that their goods were cleared at Bombay Port. Therefore, the petitioners should first join the issue before the Excise Department by filing reply to the notice.

7. We have heard rival submissions. Learned Counsel for the respondent argued that fishing into as to what was the nature and kind of material and determination of the report of the laboratory is not the domain of Special Civil Application. If defence is available to the petitioners, then that defence can be taken by them before the authorities who have issued the notice. It cannot be said that these notices are issued without jurisdiction because, Excise Department is vested with the powers of Customs as well. In that view of the matter, when the superficial examination of the material was made at Mumbai port and thereafter a detailed examination has been done at Vapi where the material is supposed to be used and on the basis of the said detailed examination, if a notice is issued, it cannot be said that the said notice is without jurisdiction.

8. At this stage, the learned Counsel appearing for the Department has brought to the notice of the Court Circular No. 88/98-Cus., dated 2-12-1998 issued by the Government of India, Ministry of Finance, Department of Revenue which provides for degree of supervision of the department officers on movement of raw materials, components, finished goods and manufacturing process and accounting of the same in an EOU. Clause (iii) of the said Circular is with respect to movement of non-duty paid goods, which empower the officer in-charge of the sending EOU and receiving units shall watch movements and to see whether the goods have been actually received in the unit or not. Therefore, the present petition is not entertained with a liberty to the petitioner to join the issue with the respondents in response to the notice issued.