(1999) 04 BOM CK 0046

In the Bombay High Court

Case No : Writ Petition No. 164 of 1994

Apollo Seafoods APPELLANT

Vs

Union of India and others RESPONDENT

Date of Decision : 01-04-1999

Acts Referred:
Customs Act, 1962 — Section 14, 142

Citation : (1999) 3 BomCR 729 : (2000) 2 MhLj 70

Hon'ble Judges : R.K. Batta, J;N.P. Chapalgaonkar, J

Bench : Division Bench

Advocate : N. Sardessai, for the Appellant; S.R. Rivonkar, A.C.G.S.C., for the Respondent

Judgement

R.K. Batta, J.—The petitioner firm was granted advance licence dated 24th March, 1992 under the Duty Exemption Entitlement Scheme (hereinafter referred to as ''the said Scheme'') whereby the firm was authorised to import 440 MTs. of Polyethylene/Polypropylene Moulder Powder/Granules. The licence carried with it an export obligation both in terms of value and quantity viz., Rs. 830 lakhs in terms of value and 1850 MTs. in terms of quantity. This licence was issued for a period of 9 months but its term was extended from time to time till 30th April, 1994. According to the petitioner, by the end of December 1993 it performed export obligations to the extent of 1950 MTs. in quantity with an approximate value of Rs. 670 lakhs and for a reduction in obligation in terms of value, an application was made to the Advance Licensing Committee. On 14th January, 1994, the office premises of the petitioner were raided by the Officers of the Directorate of Revenue Intelligence, Goa. Thereafter the factory premises were raided on 21st January, 1994 and during the raid of the factory premises certain documents listed in panchanama dated 28th January, 1994 were seized and taken away by the Officers of the Directorate of Revenue Intelligence, Goa. The Deputy General Manager was called to appear before the third respondent vide summons dated 17th January, 1994. Accordingly he appeared before the third respondent on 20th January, 1994. Between 20th January, 1994 to 16th March, 1994 the statements of the Deputy General Manager were recorded. It is in these circumstances that the petitioner approached this Court in writ jurisdiction seeking directions to prohibit the respondents from proceeding further in the matter on the ground that the respondents had no jurisdiction to initiate action in the matter and it was only the Licensing Authority, namely, Controller of Imports and Exports, who had issued the licence, who was competent to initiate action, if any, under the said Scheme in the event the Licensing Authority came to the conclusion that the export obligations had not been fulfilled or for violation of any terms or undertakings on which the imports were permitted under the Advance Licence. Interim Order was granted in the matter on 7th April, 1994 in terms of prayer (b) restraining the respondents from proceeding further in the matter. No return has been filed by the respondents.

2. We have heard learned Advocate Shri Nitin Sardessai on behalf of the petitioner and learned Additional Central Government Standing Counsel Shri Rivonkar on behalf of the respondents.

3. Learned Advocate Shri Nitin Sardessai after placing reliance on the relevant provisions dealing with penal/follow-up action in respect of cases for advance licences has urged before us that if the licence holder fails to discharge the prescribed export obligation within the permitted time, the Licensing Authority can initiate action against the licence holder and that the respondents have no jurisdiction to initiate such inquiry though they may be able to take action for the recovery of customs duty or other duty u/s 142 of the Customs Act, 1962 after the Licensing Authority finds that the licence holder has failed to discharge the export obligation. In support of his submission reliance was placed on a Division Bench Judgment of the Madras High Court in Union of India and others v. Oceanic Export Corporation, Writ Appeal No. 1043 of 1988 alongwith other Writ Appeals.

4. On the other hand, learned Advocate Shri Rivonkar urged before us that the respondents, namely, Customs Authorities are entitled to take action against the petitioner irrespective of any action taken by the Licensing Authority in view of the following provision:-

"Penal/Follow up Action 248. If a licence holder fails to discharge the prescribed export obligation within the permitted time, the licensing authority shall initiate action against the licence-holder on the lines indicated in Chapter XIX of the Handbook of Procedure, 1990-93. It shall, however, be without prejudice to any other action that may be initiated by the Customs Authorities at any stage under the Customs Act, 1962 including recovery of Customs duty or other duties and interest thereon u/s 142 of the Customs Act, 1962."

He further urged before us that the duty exempt materials imported in this case have been mis-utilized by the petitioner and they have been sold to fishermen. However, no return taking such stand was ever filed by the respondents and as such, it is not possible to look into this argument advanced by learned Additional

Central Government Standing Counsel.

5. In the case before the Division Bench upon which reliance has been placed by learned Advocate for the petitioner, the petitioner had obtained advance licence under the Scheme introduced in 1976-77, under which there was export obligation. The Assistant Collector of Customs searched the premises of the petitioner and took away various files including licences and recorded statements. Aggrieved with the seizure of the licence and non clearance of goods already imported and to be imported and because of the interference with the manufacturing business of the petitioner, the writ petition was filed. Similar arguments as have been raised before us by learned Additional Central Government Standing Counsel for the respondents, were advanced before the Division Bench of the Madras High Court by learned Advocate General which were rejected. The Division Bench held that the obligation of the licencees are under the immediate, direct and effective control of the Controller of Imports and Exports and the liability to pay customs duty would be dependent upon the nature of performance by the Importer relating to the export obligations in respect of the goods which have been imported under the said Scheme, until the contingency arises for payment of duty as provided in the Advance Licence, the Customs Authorities will have no jurisdiction to demand payment of customs duty. It was further held that when import had been made based on a licence issued by a Coordinated Authority constituted under another enactment, unless and until it takes decision as to whether customs duty had become payable or not, the Customs Authorities cannot entrench upon the powers of the Controller of Imports and Exports. It was further pointed out that if there was any mis-utilization or mis-application of the goods covered by the licence or the export obligation is not carried out properly, then in respect of those transactions and until it is decided by the concerned authorities functioning under the said Act, the Authorities of the Customs Department could have no jurisdiction to seize the goods or choose to exercise any of the powers under the Act. Once a decision is taken by the constituted authority under the Imports and Exports Control Act, then only the Customs Department will have jurisdiction to exercise all powers under the Customs Act. The question of confiscation etc., would arise only after the Controller takes a decision that the goods which had already been permitted to be imported under licence because of the subsequent conduct of the licensee had invited collection of customs duty which may arise under the circumstances. The Division Bench further pointed out that the Customs Authorities may forward whatever material/particulars they had collected to the Controller of Imports and Exports, who would take up such proceedings as circumstances may warrant including determination of the question whether any custom duty would become payable.

6. We are in respectful agreement with the views of the learned Judges of the Division Bench which are attracted on all fours in the matter under consideration. As such, the writ petition is bound to succeed. The writ petition is accordingly allowed and the respondents are directed not to proceed further in the matter.

The material collected by them may be forwarded to the Controller of Imports and Exports for the purpose of taking further necessary action, if any, at the end of the Controller of Imports and Exports, who would be free to take action in the matter in accordance with the said Scheme and law applicable in that behalf. Rule is, accordingly, made absolute in aforesaid terms with the observations recorded above. In the facts and circumstances, we shall leave the parties to bear their costs.

7. Petition allowed.