
(1993) 02 CAL CK 0021
In the Calcutta High Court
Case No : Matter No. ... of 1992

Arya Bhandar Pvt. Ltd.

APPELLANT

Vs

Asstt. Collector of Customs

RESPONDENT

Date of Decision : 25-02-1993

Acts Referred:

Customs Act, 1962 — Section 142, 143A(2), 28

Citation : (1994) 46 ECC 124 : (1994) 69 ELT 631

Hon'ble Judges : Suhas Chandra Sen, J

Bench : Single Bench

Advocate : Dilip Dhar, for the Appellant; J.C. Ghosh, for the Respondent

Judgement

Suhas Chandra Sen, J.—The Assistant Chief Controller of Imports and Exports granted an advance licence dated March 31, 1984 to the petitioner for import of 1,00,000.00 pieces of hand bag fittings (buckles, hooks, clamps, etc.). The Assistant Chief Controller also granted a Duty Exemption Entitlement Certificate (hereinafter described as DEEC to the petitioner for exemption from import duty on the import of the said goods subject to fulfilment of the conditions specified in Notification No. 117/78. One of the conditions specified in the licence was that the petitioner would have to export 20,000 pieces of leather hand bags within six months from the date of importation of the first consignment against the said advance licence. The specified period, however, was subsequently extended till July 31, 1986.

2. The case of the petitioner is that in pursuance of the said Advance Import Licence the petitioner imported hand bag fittings. While fitting with leather bags, some fittings were broken and were found defective. The percentage of such broken/defective fittings are only 16% approximately. Such loss is bound to occur in every case of manufacture. The rest of the fittings were fitted with the leather hand bags manufactured by the petitioner. The leather hand bags were duly exported to foreign countries within the extended period of Advance Licence and the same were certified by the customs authorities in the said DEEC Book.

The date of import of the said hand bag fittings and export of the leather hand bags and the signature of the Customs Officer will appear from DEEC Book. On completion of the shipments of the leather goods the original DEEC Book was submitted to the DEEC Cell for verification with their register and for issue of no objection certificate. The petitioner complied with all the procedure for registration.

3. The petitioner was served with a notice by the Assistant Collector of Customs, DEEC Cell dated November 12, 1986 to show cause why the duty and interest should not be levied upon the petitioner for non-fulfilment of its export obligations. It was alleged in the said show cause notice that the petitioner has not submitted DEEC Book with all relevant documents and proof in support of discharging its export obligation. The petitioner sent its reply by letter dated December 18, 1986. The DEEC Book along with 35 sets of relevant export documents and bank certificates of payment against the DEEC Book were enclosed with the said reply. It was also mentioned that the petitioner had already submitted 15 sets of relevant documents on February 22, 1985.

4. The case of the petitioner is that nothing happened after the said show cause notice (hereinafter described as the first show cause notice) for nearly two years. The petitioner assumed that the respondents were satisfied with the answers given by the petitioner to the first show cause notice and the proceedings were dropped. About two years thereafter, the petitioner was surprised to receive another show cause notice dated June 13, 1988 from the same Assistant Collector of Customs alleging the same facts as in the first show cause notice. The petitioner therein was directed to show cause why it should not pay a sum of Rs. 1,20,383.69 with interest at the rate of 18 per cent with effect from September 6, 1984 for non-fulfilment of the conditions specified in the notification bearing No. 177/78. The case of the petitioner further is that after receiving the second notice Sri P. Monia, Agent of the petitioner met the Assistant Collector of Customs on or before the date of personal hearing i.e. July 14, 1988 and explained to him that all papers relating to the export obligations had been duly submitted to the Customs Authorities with its earlier reply to the first notice to show cause dated November 12, 1986. It was further pointed out to him that the original DEEC Book was still lying with Customs Authorities. The respondent No. 2 assured Sri P. Monia that no further papers relating to the said export were required to be submitted as the original DEEC Book and all papers were lying with the Department. On the basis of the said assurance given by the respondent No. 2 the petitioner did not submit any further reply to the said second notice to show cause. The petitioner also did not receive any intimation from the respondent No. 2 with regard to the second notice to show cause for a long time and assumed that the proceeding initiated by the said purported notice to show cause had already been dropped.

5. It has further been stated on behalf of the petitioner that the petitioner exported leather goods to foreign countries. The leather goods exported by the

petitioner fall under Serial No. 2104 of the Schedule annexed to the Drawback Rules and the petitioner was entitled to get drawback of duty on the goods exported by it. On different dates between September 16, 1991 and May 6, 1992 the petitioner submitted 48 shipping bills claiming duty drawback of Rs. 8,97,204/-. Under the Drawback Rules, the Customs Authorities are required to allow drawback claim within 15 days from the date of making such claim. As the Customs Authorities did not allow its drawback claim, Sri P. Monia, representative of the petitioner visited the office of the respondent Nos. 1, 3 and 4 on several occasions and requested them for allowing the drawback claim of the petitioner. During last week of August, 1992, the respondent No. 1 informed the petitioner that the drawback claim could not be paid as a sum of Rs. 1,20,383.69 was recoverable from the petitioner pursuant to an order dated January 29, 1990. The petitioner thereafter made a thorough search in its office. After the thorough search, the petitioner was able to locate during the middle of October 1992 the said purported order dated January 29, 1992 passed by respondent No. 2. From the said purported order, the petitioner came to learn, for the first time, in October, 1992 that the respondent No. 2 passed an order u/s 143(A)(2)(b) of the Customs Act, 1962 confirming the demand for customs duty of Rs. 1,20,383.69. The petitioner also got another letter dated January 15, 1991 of the respondent No. 2 by which he threatened to recover the said sum of Rs. 1,20,383.69 being the demand arising out of the said purported order dated January 29, 1990 u/s 142 of the said Act. The petitioner made thorough enquiry in its office and thereafter it transpired that the said purported order dated January 29, 1990 was served on the petitioner at its registered office sometime in February, 1990 when its Export Department was being shifted from registered office to the Factory Building. In February, 1990 the Export Manager of the petitioner, Sri Dilip Mukherjee and his assistant, Sri Prabir Bhattacharjee, resigned from service due to personal reason. Due to the shifting of the Export Deptt. of the petitioner and resignation of the Export Manager and his assistant the said purported order dated January 29, 1990 passed by the respondent No. 2 was never brought to the notice of the management of the petitioner. The petitioner also could not take any step to challenge the said purported order dated January 29, 1990 as the same was misplaced due to the shifting of the registered office and resignation of the Export Manager and his assistant. The petitioner also came to learn from enquiry that the said purported letter dated January 15, 1991 threatening to recover the said purported demand was served on the registered office of the petitioner. As the purported order dated January 29, 1990 was misplaced, the petitioner also could not take any step in pursuance of the said letter dated January 15, 1991.

6. The petitioner has now come with this writ petition alleging that the order dated January 29, 1990 passed by the respondent No. 2 and the said letter dated January 15, 1991 threatening to recover the said sum of Rs. 1,20,383.69 from the petitioner are without jurisdiction and/or in excess of jurisdiction, wrongful, illegal and without authority of law. The said order was passed by the respondent

No. 2 in pursuance of second notice to show cause dated June 30, 1988. The last date of export of the leather goods was June 25, 1986. The said second notice to show cause was issued far beyond the period of six months and was therefore barred by Section 28 of the said Act. The extended period of limitation was not applicable to this case as there was no collusion or any wilful misstatement or suppression of facts by the petitioner or its agent for which extended period of limitation as provided in proviso to Section 28 of the said Act, would be applicable. The petitioner also stated that the condition precedent for confirming duty u/s 143A(2)(b) of the said Act was not satisfied as the goods were exported within the extended period. The last date of such export was made on June 25, 1986 with full knowledge of the Customs Authorities as would appear from the signature of the Customs Officer in the said DEEC Book.

7. In my view, it is not necessary to go into the merits of the controversy because there is no explanation from the Customs Department as to why it was necessary to issue the second show cause notice nearly two years after the issuance of the first show cause notice. The first show cause notice alleged certain facts to which the petitioner sent a reply. The DEEC Book was handed over by the petitioner to the Assistant Collector, who retained the book for about 14 months. This allegation has been admitted in the affidavit in opposition filed in this Court on behalf of the respondents. The only inference that can be drawn from the failure of the respondents to pass any order is that the respondents were satisfied with the explanation given by the petitioner. The question, therefore, is about the justification of issuance of the second show cause notice. Mr. Ghosh appearing for Customs Department has argued that because of certain defects in the first show cause notice the Department thought it fit to drop the proceedings and issue a second show cause notice. But this is an argument from the Bar and is not backed up by any record. I adjourned the case specifically to enable the Customs Department to satisfy the Court that a decision was taken to drop proceedings pursuant to the first show cause notice because of certain inherent defects in the show cause notice itself. But no such record has been produced. There is nothing to indicate that the proceedings pursuant to the first show cause notice was dropped because of any inherent defect in the notice. It is also of interest to note that the second show cause notice has got a different file number from the file number of the first show cause notice. In other words, a fresh file has been started for issuance of the second show cause notice. The allegations in the second notice are substantially the same as in the first notice. No explanation has been given as to what has happened to the earlier proceeding or why a second notice on substantially same pack were necessary.

8. It is well-settled that the Revenue Authorities do not have any inherent power to review a proceeding without any fresh facts. In the instant case the Revenue Authority without any fresh facts, have unnecessarily, issued a second show cause notice to a tax payer. It is also, to be borne in mind that the notice was given nearly two years after the first show cause notice. The respondents had the DEEC Book with them and had the opportunity of examining all the details for

nearly 14 months. It appears that the second show cause notice was issued without referring to the records of the Department and with complete non-application of mind. On the face of it second notice is irregular. Therefore, the impugned second show cause notice is struck down. The order passed pursuant to the said notice is also quashed.

9. Under these circumstances, there will be an order as prayed in terms of prayers (a) and (b) of the writ petition.

10. In view of the aforesaid order the Department is directed not to withhold any amount payable to the petitioner on account of drawbacks on the basis of the impugned order dated January 29,1990 and pay off the claims of the petitioner now outstanding.

11. The writ petition is finally disposed of as above.

12. All parties are to act on the signed copy of the operative part of this judgment on the usual undertaking.