

(1986) 08 BOM CK 0008
In the Bombay High Court
Case No : Writ Petition No. 911 of 1981

Bajaj Plastics Limited

APPELLANT

Vs

The Collector, Central Excise and Another

RESPONDENT

Date of Decision : 22-08-1986

Acts Referred:

Customs Act, 1962 — Section 2, 57, 58, 68, 69

Citation : (1986) 10 ECC 338

Hon'ble Judges : V.A. Mohta, J;B.G. Deo, J

Bench : Division Bench

Final Decision : Allowed

Judgement

V.A. Mohta, J.—M/s. Bajaj plastics Limited, a public limited company, engaged in the production of high density polyethylene powder, fabrics and bags, has by this writ petition challenged the validity of, the three communications, Annexure "C" dated 27th February, 1981, Annexure "E" dated 6th March, 1981 and Annexure "H" dated 16th March, 1981 issued by the Collector, Central Excise and the Assistant Collector, Central Excise, Division No. 1, Nagpur. By these communications the facility of storing imported raw material in a private bonded warehouse of the petitioner situated within the factory premises, granted u/s 58 of the Customs Act, 1962 ("the Act") has been withdrawn.

2. The factory is situated in an "industrial area" within meaning of Section 2(g) of the Maharashtra Industrial Development Act, 1961, at a distance of about 8 kilometres from the Corporation limits of the city of Nagpur. The petitioner requires high density polyethylene moulding powder and low density moulding powder and granules, which are imported under a valid import licence. With the liberalised policy of import, particularly after 1976, it became possible for the petitioner to stock such raw: materials and hence big godowns were constructed which were licensed as a private bonded warehouse for storing imported raw materials without payment of duty under the Act subject to the conditions set out in the licence. The licence was granted on 4th February, 1978 and was renewed

from time to time, last such renewal being from 14th January, 1981 till 3rd February, 1982. As the quantity of the raw material imported was gradually increasing, additional space for its storage was required, for which request to approve additional godown and its inclusion under the licence was made. The petitioner was informed by the Assistant Collector, Nagpur on 27th February, 1981 (Annexure C) the Policy decision of the Government of India, to the effect that the facility of custom bonding in the private bonded warehouse in the interior should be gradually withdrawn and fresh arrivals should be allowed to be stored only in public bonded warehouse at Bombay till such arrangements exist at Nagpur. The Collector, Central Excise, addressed a communication dated 6-3-1981, Annexure E, to the petitioner, inviting its attention to the Trade Notice No. 1/80 (Customs) dated 26-7-1980, which contained the said policy decision. On 16-3-1981, the Assistant Collector addressed a communication, Annexure H to the petitioner informing that a public bonded warehouse of M/s. Central Warehousing Corporation, Nagpur, has been established in Nagpur and that the fresh arrivals can be warehoused in the same and that no space certificate for bonding goods could be granted to a private bonded warehouse.

3. The contention of the petitioner is that the policy decision of not granting licence for a private warehouse at a particular warehousing station on the ground that a public warehouse has been established at a different warehouse station is ultra vires of the letter and spirit of the Act. To examine the validity of this point it will be necessary to notice the salient provisions of the Act. Duties of customs are levied at prescribed rates on the goods imported in India. Chapter VII deals with the clearance of imported goods and export goods, and Chapter IX with warehousing. Section 57 permits appointment of public warehouses wherein dutiable goods may be deposited without payment of duty at any warehousing station. Section 58 permits licensing of private warehouses at a warehousing station wherein dutiable imported goods may be deposited without payment of duty. Section 68 deals with the procedure of entitlement for clearance of those dutiable goods from the warehouse for home consumption and Section 69 with their clearance for exportation. Section 2(43) defines the term "warehouse" as meaning a public warehouse appointed u/s 57 or a private warehouse licensed u/s 58 and Section 2(45) defines the term "warehousing station" as meaning a place declared as a warehousing station u/s 9. Section 9 authorises the power to declare by a notification in the official gazette places to be warehousing stations at which alone public warehouses may be appointed and private warehouses may be licensed. By notification No. 7/74-Cus dated 9-2-1974 the Board had declared the Maharashtra Industrial Development Corporation Area, in Nagpur, in the State of Maharashtra, as a warehousing station. Vide notification No. 122/81-Cus dated 9-5-1981, Nagpur city was declared to be a warehousing station. M/s. Central Warehousing Corporation, Nagpur, situated in the city of Nagpur, was appointed as a public bonded warehouse at that warehousing station. Notification dated 9-2-1974 continues to be in force and no public warehouse has been appointed within the M.I.D.C. area Section 58 reads thus:

58. (1) At any warehousing station, the Assistant Collector of Customs may license private warehouses wherein dutiable goods imported by or on behalf of the licensee, or any other imported goods in respect of which facilities for deposit in a public warehouse are not available, may be deposited without payment of duty.

(2) The Assistant Collector of Customs may cancel a licence granted under Sub-section (1)--

(a) by giving one month's notice in writing to the licensee; or

(b) if the licensee has contravened any provision of this Act or the rules or regulations or committed breach of any of the conditions of the licence:

Provided that before any licence is cancelled under Clause (b), the licensee shall be given a reasonable opportunity of being heard.

(3) Pending an enquiry whether a licence granted under Sub-section (1) should be cancelled under Clause (b) of Sub-section (2), the Assistant Collector of Customs may suspend the licence.

4. Having regard to the above scheme of the Act and the undisputed factual position noticed above, it seems to us that the contention of the petitioner is well founded. M.I.D.C. area has been declared under the provisions of the Maharashtra Industrial Development Act, 1961 and Section 2(g) defines the term "industrial area". It means, any area declared to be an industrial area by the State Government by notification in the Official Gazette, which is to be developed and where industries are to be accommodated. The area has definite identifiable limits and is situated at a distance of about 8 kms. from the area of city of Nagpur, which is declared under the city of Nagpur Corporation Act, 1948, Section 5(10) of which defines the City of Nagpur, as meaning the local area which the State Government may, by notification under the Act, declare to be the city and any other area which the State Government may include on the issue of a notification u/s 389. Section 389 deals with the declaration of intention of the State Government to include within the limits of the city any specified area in the neighbourhood of the city. No notification under this section covering the M.I.D.C. area has been issued. Thus the area of Nagpur city and the M.I.D.C. area are two different identifiable areas separated by a distance of about 8 kilometres. Both are different warehousing stations declared as such by two different notifications. M.I.D.C. Warehousing station does not have the facility of a public warehouse whereas the Nagpur city warehousing station has such facility since 1981. Warehousing stations are declared only after considering the need of having a warehouse. Again it is within the discretion of the customs authorities to establish a public warehouse in any warehousing station. If such facility is provided for, there cannot exist a right in anybody to get a licence for establishing a private warehouse. It may be a sound policy not to grant licence u/s 58 in any warehousing station in case public warehouse has been appointed u/s 57 at that warehousing station. The question as to whether despite existence of

a public warehouse, licence for private warehouse at that station can be refused even though no proper space or facility for storing goods in that public warehouse is available, does not arise in the present, matter. The basic question is, is it a sound legal policy to refuse to grant or renew licence u/s 58 on the ground that a public warehouse has been established at altogether different warehousing station. In our Judgment, the answer has to be in the negative. To hold, otherwise is to destroy the very spirit of Section 58. Facility of a public warehouse at some other warehousing station would always be available. All ports and airports are warehousing stations and thus logical extension of stand of the customs authorities will be that licence in interior warehousing stations can always be refused on the ground that in ports and airports bonded public warehouses are established. The very object of establishing different warehousing stations in the interior would be defeated on such view of the matter.

5. It is contended on behalf of the respondents that it is a question of policy decision based on expert knowledge and under the circumstances Courts should be slow to interfere with the same. True it is that grant of licence is discretionary especially when any policy decision is involved. But there cannot be a policy contrary to the letter and spirit of the Act. There cannot be genuine exercise of the discretion if the letter and spirit of statute is misconstrued. Taking into consideration Sections 9, 57 and 58 it seems to us that the proper implementation of the policy would be to grant or renew licences for private warehouses at warehousing stations in the interior only after appointing public warehouses at those which satisfy the need of a particular warehousing station.

6. The Madhya Pradesh High Court had occasion to consider the validity of such a policy in the case of Asbestos Cement Lid, and Anr. v. Union of India and Ors. 1983 ELT 883. The gist of the ratio of that exhaustive and weighty judgment is:

But when at a particular warehousing station there is no public warehouse appointed u/s 57, the licensing authority cannot refuse application for a licence or cancel the licence or refuse renewal of a licence for a private warehouse on the ground that facilities are available in a public warehouse at a different warehousing station.

We are in respectful concurrence to the said view.

7. The respondents contend that the area mentioned in the notification dated 9-2-1974 is the M.I.D.C. area, Nagpur and under these circumstances, public warehouse appointed within the area of city of Nagpur should be considered as a public warehouse appointed at warehousing station M.I.D.C. area also. We find it difficult to accept this submission for the one simple reason that the two areas are entirely different and are not even connected with each other. Our special attention was invited to the word "place" in Section 2(45). The term "place" has neither been defined under the Customs Act nor under the General Clauses Act and hence various dictionary meanings of the said word were brought to our

notice. Stroud's judicial dictionary, Third Edition, Vol. 3 at page 2199 states:

"Place". The word "place" is generally found in conjunction with other words which give it a colour, and is usually controlled by its context.

It is difficult to see how the above definition helps the case of the respondents. A "place" is an area, in the context may be even an object like railway carriage or a car or cart. But it is difficult to imagine the concept of place de hors an identifiable limit. In a great measure the question would be one of fact in such case. In the context of Section 2(45) it has to be a definite area so marked out that it can be found and recognized as a place. Quite obviously it means an area within the known boundary. If the boundaries notified are entirely different, it is difficult to see how the area within the two boundaries could be the same place. In Aiyar's Judicial Dictionary, 9th Edition at page 744, it is mentioned:

"place". The word "place" may be a large area; all that is necessary is that the place should be sufficiently defined so that the public is reasonably notified of its extent. There is not such distinction between a place and an area,....

8. The next contention that 1974 notification u/s 9 automatically ceased so exist or ceased to be effective after issuance of 1981 notification is fallacious.

9. Under these circumstances, in our view, the customs authorities have misconstrued the provisions of the Customs Act in issuing the three impugned communications. We, therefore, quash the three impugned communications, Annexure "C" dated 27th February, 1981, Annexure "E" dated 6th March, 1981 and Annexure "H" dated 16th March, 1981 and direct the respondents to consider the petitioner's applications for renewal as well as raising the limits of storage afresh in accordance, with what we have laid down above. Till then we further direct continuance of the interim order passed in this case on 26-3-1981.

10. The petition is allowed and rule made absolute in the above terms. No order as to costs.