(2016) 04 KAR CK 0068

In the Karnataka High Court

Case No : Writ Appeal No. 316 of 2016 (T-TAR)

Chairman, C.B.E. & C. APPELLANT

Vs

Rajesh Exports Ltd. RESPONDENT

Date of Decision : 12-04-2016

Acts Referred:

Citation : (2016) 338 ELT 207 : (2016) ILRKarnataka 3777

Hon'ble Judges : Subhro Kamal Mukherjee, CJ. and Ravi Malimath, J.

Bench : Division Bench

Advocate : S/Shri Prabhuling K. Navadgi, Addl. Solicitor General of India along with Y. Hariprasad, Advocate, for the Appellant; S/Shri Udaya Holla, Senior Advocate, H.N. Shashidhara for M/s. Kesvy & Co, Advocates, for the Respondent

Final Decision : Partly Allowed

Judgement

1. The writ petitioner is a public limited company carrying on business of manufacture and export of gold jewellery and gold products.

2. Section 25 of the Customs Act, 1962, envisages power of the Central Government to grant exemption from duty. On March 17, 2012, the Central Government issued a Notification No. 12 of 2012-Customs, in exercise of the powers conferred by sub-section (1) of Section 25 of the Customs Act, 1962, and in supersession of the notification dated March 1, 2012, as the Central Government was satisfied that it was necessary in the public interest so to do, to exempt the goods of the description specified in Column (3) of the Table mentioned in the said notification or Column (3) of the said Table read with the relevant list appended thereto, as the case may be, and falling within the Chapter, heading, sub-heading or tariff item of the First Schedule to the Customs Tariff Act, 1975, as has been specified in the corresponding entry in Column (2) of the said Table, when imported to India :-

(a) from so much of the duty of customs leviable thereon under the said First Schedule as has been in excess of the amount calculated as the standard rate specified in the corresponding entry in Column (4) of the said Table;

(b) from so much of the additional duty leviable thereon under sub-section (1) of Section 3 of the Customs Tariff Act, 1975, as has been in excess of the additional duty rate specified in the corresponding entry in Column (5) of the said Table, subject to any of the conditions, specified in the Annexure to the said notification.

3. One such notified/specified gold is gold dore bar (unrefined gold bar).

4. Condition No. 5 contemplates that the importer should follow the procedures set out in Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996.

5. Condition No. 34 of the said notification specifies that

(a) the goods are to be shipped directly from the country in which they are produced and each gold bar has a weight of 5 kilograms or above;

(b) the goods have to be imported in accordance with the packaging list issued by the mining company by whom they are produced;

(c) the importer must produce before the Deputy Commissioner of Customs or the Assistant Commissioner of Customs, as the case may be, an assay certificate issued by the mining company or the laboratory attached to it, giving detailed precious metal content in the dore bar;

(d) the gold dore bars are imported by the actual user for the purpose of refining and manufacture of standard gold bars of purity of 99.5% per centum and above.

(emphasis supplied by us).

6. As per the notification, the writ petitioner is entitled to import gold bar, subject to compliance of the conditions, on payment of customs duty at the rate of 3% per centum instead of 4% per centum.

7. The writ petitioner imported gold dore bar from the Perth Mint of Australia, which is a wholly owned Western Australian Government concern governed by the Act of Parliament of Australia, that is, the Gold Corporation Act, 1987. In the packaging list, it was categorically certified that the Western Australian Mint (trading as Perth Mint) is 100% per centum owned and guaranteed by the Government of Western Australia and established under the Gold Corporation Act, 1987. The exporter declared that those gold dore bars were produced and supplied by mines located within Australia. They were not permitted to disclose the name of the gold mine. It was, further, certified in the Assay Certificate that Perth Mint has been a London Bullion Market Association accredited laboratory and it was appointed by the Australian Mining Company by whom the gold dore bars were produced to conduct assays on the bars.

8. The customs authorities cleared all the shipments on being fully satisfied that the writ petitioner fulfilled Condition Nos. 5 and 34 of the said Notification No. 12 of 2012.

9. Subsequently, however, on October 5, 2012, the Commissioner of Customs addressed a letter to the Central Board of Excise and Customs, seeking clarification regarding the gold dore bars imported by the writ petitioner. It is pertinent to mention here that in Paragraph 8 of the said letter, the Commissioner of Customs stated that the writ petitioner had substantially complied with the conditions of the notification.

10. The Central Board of Excise and Customs in reply to the said letter dated October 5, 2012, asked the Commissioner of Customs that she might obtain the packaging list issued by the mining company and compare and correlate it with the packaging list issued by the Perth Mint. However, there was an admission that the assay certificate issued by the Perth Mint could be accepted since the laboratory has been attached to and appointed by the mining company.

11. On May 29, 2013, the Deputy Commissioner of Customs demanded from the writ petitioner the packaging list from the mining company in respect of the imported gold dore bars imported from the Perth Mint, Australia. Promptly, the writ petitioner sent the reply dated June 3, 2013, pointing out that it had produced packaging list of Perth Mint with each of the shipment and that Perth Mint was legally barred by the Australian law from furnishing the packaging list of mining company.

12. The writ petitioner produced a certificate from the Perth Mint, Australia, in relation to the disputed shipments, that every gold dore bar exported by the Perth Mint for transportation to India was produced in Australia and was shipped from Australia. It was, further, certified that each of the gold dore bar exported by the Perth Mint and transported to India had a gross weight in excess of 5 kilograms. It was stated that every shipment of gold dore bars exported by them for transportation to India was in accordance with the packaging list of the mining company with reference to the gross weight and purity as stated by the mining company. It was, also, stated that every shipment of gold dore bar exported by them and transported to India was accompanied by an assay certificate, which detailed exact content of the precious metal in each bar.

13. Our attention is, also, drawn to a certificate issued by the Chamber of Commerce and Industry of the Western Australia, dated June 14, 2013. They certified that the Perth Mint has been a Corporation wholly owned by the Government of Western Australia and has been prevented from disclosing the information including documentation pertaining to their customers to the unrelated parties under the terms contained in the Gold Corporation Act, 1987. They, further, certified that the gold dore that Perth Mint has supplied was sourced from mines within Australia and was in accordance with the packaging list issued by the mining company following the sampling and the assay process. It, also, certified that the Perth Mint and its laboratory were attached/appointed through contract to the mining company producing the dore.

14. Our attention is, also, drawn to a letter dated May 7, 2013, of the Perth Mint,

Australia, addressed to the Director General, Directorate of Revenue Intelligence, New Delhi, reiterating their stand in their earlier certificates.

15. Nevertheless, on June 18, 2013, the Deputy Commissioner of Customs issued a letter to the writ petitioner asking them to produce the packaging list from the mining company and threatened that in the event of their failure to produce the packaging list from the mining company, it would be presumed that the writ petitioner was unable to produce the same for correlation.

16. In the aforesaid background, the present writ petition being W.P. No. 31835 of 2013 [2016 (335) E.L.T. 3 (Kar.)], was moved seeking to quash the letter dated June 18, 2013, issued by the Deputy Commissioner of Customs, which has been Annexure-G to the writ petition and, also, for a declaration that the Condition Nos. 34(b) and 34(c) of the Notification No. 12 of 2012, was satisfied by the petitioner while importing the gold dore bar shipments at the Delhi Air Cargo from the Perth Mint.

17. The Hon''ble Single Judge, by the order impugned, held that the demand of the packaging list from the mining company was not proper and it was, further, declared that the aforementioned conditions were satisfied.

18. From the narrations, as above, goods are to be imported in accordance with the packaging list issued by the mining company by whom they are produced. We hold that the goods are not required to be imported along with the packaging list. In the Condition No. 34 the expression "in accordance with the packaging list issued by the mining company by whom they were produced" is used. Normally, the Courts will have to follow the rule of literal construction, which enjoins the Court to take words as used and to give it the meaning, which naturally implies.

19. Perth Mint is a wholly owned company by the Government of Western Australia. Perth Mint is precluded by the Gold Corporation Act, 1987, from disclosing any information, including the documents pertaining to their customers, to unrelated parties.

20. There is no allegation that the importer did not follow the procedures set out in the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996.

21. Therefore, we do not find any fault in the order of the Hon''ble Single Judge in holding that the demand of the Deputy Commissioner for production of the packaging list from the mining company was illegal and that the importer has complied with the requirements of the Notification No. 12 of 2012.

22. However, after the writ petition was filed, the Additional Director General, Directorate of Revenue Intelligence, issued show cause notices dated July 15, 2013, August 8, 2013 and December 9, 2013, under Section 28 read with Section 124 of the Customs Act, 1962, asking the writ petitioner to show cause why the benefit of Notification No. 12 of 2012 should not be denied to them in respect of gold dore bars imported by them and for levy of duty, penalty and

confiscation. These demand notices were not challenged in the writ petition. Therefore, the observations of the Hon''ble Single Judge in the impugned order concerning such demand notices were unnecessary and we set aside all such observations. We hold that in relation to such show cause notices the law will take its own course. We express no opinion.

23. We, therefore, modify the order of the Hon''ble Single Judge, as above.

24. The appeal is, thus, allowed in part.

25. In view of the disposal of the writ appeal, IA No. 1 of 2016, does not survive for consideration and is, accordingly, disposed of.

26. There will be no order as to costs.