(1998) 02 CAL CK 0026

In the Calcutta High Court

Case No : Writ Petition No. 225 of 1997

Chemsilk Commerce Pvt. Ltd. and Another — APPELLANT

Vs

The Commissioner of Customs and Others — RESPONDENT

Date of Decision : 13-02-1998

Acts Referred:
Customs Act, 1962 — Section 49

Citation : (1998) 59 ECC 467

Hon'ble Judges : M.H.S. Ansari, J

Bench : Single Bench

Judgement

M.H.S. Ansari, J.—The matter pertains to Duty Exemption Scheme under Chapter VII of the Export & Import Policy, 1992-97. Under the said Scheme import of raw materials, components required for the product to be exported are permitted duty free for processing. A quantity based Advance Licence for the materials to be imported against it is freely transferable after the export obligation is fulfilled and Guarantee/ LUT is redeemed. The petitioner purchased a licence after it was made transferable from M/s. Enterprise Finance Ltd. who in turn purchased from M/s. Venice Silks who in their turn purchased the same from the original licencee M/s. Annapurna Yarn Fabrics. The petitioner imported goods into the country which arrived at the Calcutta Port on 30th August, 1996 and the petitioner sought for release of the same on the basis of the aforesaid licence claiming exemption of the Import duty on the goods imported by the petitioner. The Custom Authorities, however did not allow the petitioner to remove the goods and instead directed the petitioner to store the goods in the Bonded Warehouse u/s 49 of the Customs Act and giving an option to the petitioner to clear the goods on production of any other licence. This was done on the basis that the Custom Authorities had issued a Show Cause Notice to the original licencee i.e. M/s. Annapurna Yarn Fabrics against the very same Advance Licence dated 16.1.95 and the case was posted for hearing on 4.2.97.

2. The above writ petition was filed assailing the action of the respondent

Customs Authority in not releasing the goods to the petitioner on the basis of the Duty Free Licence dated 16.1.95 and for certain, consequential directions upon the respondent authorities.

3. After having heard the learned Counsel for either parties this Court is of the view that this writ petition can be disposed of at this stage with certain appropriate directions upon the Customs Authorities.

4. Admittedly no violation of any Customs Law is alleged against the petitioner in respect of the import of goods in question or with regard to their valuation. The only objection of the Customs Authorities for not releasing the goods to the petitioner on the basis of the licence in question is that the original licensee has been subjected to an enquiry proceeding i.e. M/s. Annapurna Yarn Fabrics which is still pending. In so far as the case against M/s. Annapurna Yarn Fabrics is concerned, that is not a subject matter of the present writ petition and this Court is not considering the same in the present proceeding. It is open to the Customs Authorities to take such action as may be open to them in accordance with law. However, in so far as non-release of the goods to the petitioner is concerned, it will be seen that the goods arrived in the Calcutta Port as far back as in 30th August, 1996 and have been stored in the Bonded Warehouse on the ground of pendency of the proceeding against the original licencee. If as a consequence of an order passed against the original licencee any customs duty becomes payable on the goods imported by the petitioner and sought to be cleared based upon the said licence, it is always open to the Customs Authorities to take appropriate action for recovery of the same in accordance with law. No useful purpose would be served by allowing the goods to lie in the Bonded Warehouse. If the interest of the Customs Authorities can be protected, the goods in question can be released to the petitioner.

In the light of the above, it is directed that the balance 50% of the goods which are lying in the Bonded Warehouse be released to the petitioner upon the petitioner furnishing an undertaking in writing to the Commissioner of Customs that in the event of the petitioner being held liable for payment of Customs Duty in respect of the said goods which have been imported by the petitioner, the same shall be paid and discharged by the petitioner. It will be open to the Customs Authorities to obtain personal guarantee also from the Directors of the petitioner firm before release of the said goods to the petitioner. Any such undertaking by the petitioner and guarantee of the Directors of the petitioner firm shall be for a period of one year within which period, the Customs Authorities should arrive at a decision as otherwise it is directed that the undertakings or the Guarantee of the Directors shall lapse and in such an event it would be open to the Customs Authorities after the said period to take action if so available, in accordance with law.

6. With the above directions the writ petition is disposed of accordingly.

7. Since no affidavit-in-opposition has been filed, the allegations made in the writ

petition shall not be deemed to have been admitted by the Respondents.

All parties are to act on a signed xerox copy of this dictated order on the usual undertaking.

