

(2005) 02 GUJ CK 0059

In the Gujarat High Court

Case No : Special Civil Application No. 11764 of 2001

Chirag Enterprise

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 17-02-2005

Acts Referred:

Customs Act, 1962 — Section 112, 125, 47(2)

Citation : (2005) 02 GUJ CK 0059

Hon'ble Judges : H.N. Devani, J;D.A. Mehta, J

Bench : Division Bench

Advocate : Lilu K. Bhaya, for the Appellant; Jitendra Malkan, Respondent Nos. 1-4 and R.K. Mishra, for the Respondent

Final Decision : Allowed

Judgement

D.A. Mehta, J.—The petitioner, a proprietary concern is registered as Small Scale Industrial Unit with Central Excise, Jamnagar. The petitioner is engaged in manufacture of Methyl Methacrylate Monomer from Acrylic Plastic Scrap. The petitioner has a valid import licence for import of Acrylic Plastic Scrap (crushed). According to the petitioner, it placed an order with one M/s Acrica International for supply of Acrylic Plastic Strips. It is further the case of the petitioner that the said exporter shipped consignment containing 19.22 M.Ts. of goods described as Acrylic Plastic Strips. Upon arrival of goods at the Port of Bombay and subsequently at ICD, Ahmedabad, the petitioner filed Bill of Entry No. 666 dated 7th March 2000 with respondent No.3 seeking clearance of the consignment. The goods so imported were examined by the customs authorities and finding the goods to be Acrylic Plastic Waste / Scrap, the authorities drew the samples from the said goods and sent the samples to Central Institute of Plastics Engineering & Technology, Ahmedabad for testing. Since the goods, as described in the Bill of Entry and other documents, were found to be different, the petitioner was issued a letter dated 11th February 2000, asking the petitioner to opt for show cause notice and / or personal hearing. The petitioner requested for personal hearing,

but did not dispute the report of the test carried out by the Central Institute, as described hereinbefore. After hearing the petitioner, respondent No.3 passed the order on 21-7-2000 bearing No.16 / Additional Commissioner / 2000. In the said order, respondent No.3 imposed redemption fine of Rs.2,42,000/- u/s 125 of the Customs Act, 1962 and also imposed a personal penalty of Rs.2,00,000/- u/s 112(a) of the Act. The importer was given an option to redeem the goods on payment of redemption fine.

2. The petitioner chose to exercise the other option available to it, namely, keeping the Bill of Entry alive and preferring an appeal before the Commissioner of Central Excise & Customs (Appeals). The said appellate authority, after hearing the representative of the petitioner, set aside the order in original, and held that, "In view of the above that the consignment is as per the description / definition in P.N.No.392(PN)92-97, dated 1st January, 1997 and appellants are in possession of a valid import licence and while extending the benefit of doubt that it is a case of bonafide mistake, the order of the adjudicating authority is not sustainable and is, accordingly, set aside and the appeal and appeal is allowed."

3. Thereupon, the petitioner approached the respondent No.3 calling upon the said respondent to re-assess the Bill of Entry and release the cargo as early as possible. On 5th November 2001, the petitioner once again wrote to the respondent No.3 to issue the challan in terms of the order in original. In response thereto, on 14th December 2001, respondent No.3 wrote to the petitioner to clear the goods after payment of duty along with interest as per Section 47(2) of the Act, and to submit specific import licence as per appellate order.

4. It appears that, in the meantime, the petitioner had moved this Court by way of present petition on 13th December 2001. On 18th December 2001, the Court passed an order recording the statement of the learned standing counsel for the Customs Department that the goods in question will be released within a short time. On 21st December 2001, the Court directed the respondent to release the goods in question within one week. In response thereto, on 27th December 2001, respondent No.3 addressed communication, which is at Annexure "IX" to the affidavit in reply of respondent No.3, requesting the Manager of respondent No.5 "to implement the Hon"ble High Court's order and deliver the goods to the importer immediately."

5. When the matter came up on 18th January 2002, the Court found that the goods had not been released and hence, the Court directed the respondent No.5 to release the goods in favour of the petitioner on the petitioner giving an undertaking in writing for paying the amount of warehousing dues to this Court before receiving goods. Such an undertaking was to be filed in the Court within a period of three days from the date of the order. It is an admitted position that the undertaking has duly been tendered by the petitioner.

6. It is on record that even as late as on 29th January 2002, the petitioner made

a grievance before the Court that the respondents were not releasing the goods despite the earlier orders of the Court and hence, the respondent No.5, Manager of respondent C.W.C., was directed to remain personally present before the Court.

7. Heard Ms.L.K.Bhaya, the learned advocate for the petitioner. She has vehemently urged that once the petitioner had succeeded before the appellate authority and shown its willingness to comply with the order of the appellate authority, the petitioner should not be saddled with any demurrage which respondent No.5 is otherwise entitled to recover. That the delay, if any, was at the behest of the customs authorities and for this, the petitioner should not be penalized. It was further submitted that, from the date of the appellate order, at least the petitioner should not be required to pay any demurrage because the petitioner had succeeded fully. She relied upon cases of (i) Shipping Corpn of India Ltd. Vs. C.L. Jain Woolen Mills and Others, and (ii) Commissioner of Customs and Central Excise (Appeals), Hyd. and others Vs. Sujana Steels Ltd., Hyd. and another,

8. Mr.J.M.Malkan, the learned senior standing counsel for the Central Government appearing for respondents Nos. 1, 2, 3 and 4, and Mr.R.K.Mishra, the learned advocate appearing for respondents No.5 have been heard.

9. As the facts narrated hereinabove show the petitioner had been held to be liable to pay duty in relation to imported goods, namely, Acrylic Plastic Scrap and the petitioner had succeeded in the appeal filed by it. It is also an admitted position that the order of the appellate authority has not further been challenged by the department. In these circumstances, it is not possible to accept the contention raised on behalf of the respondents that the petitioner is required to bear the demurrage charges. The effect of the appellate order is that, firstly, the order in original does not survive and stands merged in the appellate order; secondly, as the entire appeal has been allowed, the order in original does not survive. In other words, for all intents and purposes, it is as if the petitioner was not required to pay any duty except for the amount of duty which was payable as per Bill of Entry filed by the petitioner. In these circumstances, the petitioner cannot be saddled with liability to bear demurrage charges, because the petitioner had not violated any provision as a result of which the goods of the petitioner were required to be confiscated and detained as per order in original made by the respondent No.3. At the same time, it is necessary to ensure that respondent No.5, namely, Central Warehousing Corporation, who has supplied space for storage of goods till the period the goods are released, on account of lack of customs clearance, should not be left with a situation whereunder it is not compensated for the use of space which the goods occupied. In the circumstances, the Customs Department is liable to bear the demurrage charges for the period upto 31st December 2001. The view taken by this Court is in accord with the ratio of the aforesaid decision in case of Shipping Corporation of India Ltd.

10. In the result, the customs authorities are directed to bear the demurrage

charges for the period upto 31st December 2001, and for the balance period, if any, it will be upto respondent No.5. At the same time, respondent No.5 is hereby directed not to recover any charge from the petitioner. The petitioner is discharged from the undertaking filed before this Court. The petition is accordingly allowed as aforesaid. Rule is made absolute to the aforesaid extent.

11. Before parting, it is necessary to take note of a disturbing feature. In the petition as well as in the affidavit in reply of respondent No.3, there are various errors, may be inadvertent, but the result is that the Court was required to invest more time than was necessary in the facts and circumstances of the case only to understand the controversy between the parties.