
(2015) 09 SC CK 0197
In the Supreme Court Of India
Case No : Civil Appeal No. 987 of 2007

DCW Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 23-09-2015

Acts Referred:

Customs Act, 1962 — Section 27

Citation : (2015) 324 ELT 702

Hon'ble Judges : A.K. Sikri and Rohinton Fali Nariman, JJ.

Bench : Division Bench

Advocate : S. Vasudevan, V. Lakshmikumaran, M.P. Devanath, L. Charanaya, Nupur Maheshwari, Hemant Bajaj, R. Ramachandran and Aditya Bhattacharya, Advocates, for the Appellant; K. Radhakrishnan, Senior Advocate, Rupesh Kumar, Binu Tamta, Alka Agarwal, Jitin Singhal,

Final Decision : Dismissed

Judgement

1. The Appellant-company herein had imported a Steam Tube Dryer machinery/plant. Some dispute about the classification of the said machinery arose. The Revenue/Customs Authorities wanted the Appellant to pay higher duty which the Appellant was disputing. Insofar as the Custom Authorities are concerned, they had passed the orders calling upon the Appellant to pay the duty. Without paying this duty, the Appellant approached the High Court of Gujarat by way of writ petition with the prayer that the Appellant be allowed to get the said machinery released on payment of admitted amount of duty. On this writ petition, interim orders dated 4-5-1992 were passed permitting the Appellant to deposit a sum of Rs. 70 lakhs as a condition for utilizing the machinery. We may record here that the Appellant had earlier furnished the Bank Guarantee in the sum of Rs. 1,45,27,079/-. The exact order which was passed on that date reads as under:-

At the same time, it will also be proper if the Petitioner is directed to deposit some amount so that such money becomes available to the public Exchequer. In our opinion, it will be quite fair and just if the applicant is directed to deposit Rs.

70,00,000/- in this Court as a condition for utilising the machinery. As it will take some time for the applicant to install the machinery and commission it, we direct the applicant to start paying Rs. 70,00,000/- from 1st August, 1992, in four equal monthly installments. The bank guarantee, which the applicant is required to continue, will have to be reduced to the extent installments are paid by the applicant. The Respondents will be at liberty to withdraw the amount that may be deposited by the applicant in this Court on condition that whenever called upon to do so; they will repay that amount within the time that may be specified by this Court.

As per the aforesaid order, the Appellant was required to pay a sum of Rs. 70 lakhs in four equal monthly installments starting from 1-8-1992. The Appellant deposited the first installment in the sum of Rs. 17.50 lakhs and defaulted in paying the remaining three installments. When this was brought to the notice of the High Court, the High Court vacated that order. Subsequently, order dated 1-8-1993 was passed which records the vacation of the order passed earlier and permitted the Customs Authorities to encash the Bank Guarantee.

2. The relevant portion of the said order reads as under:-

In the result it is clarified and directed that the interim relief granted earlier has stood vacated pursuant to the order passed by this Court on September 18, 1992 inasmuch as the company has not deposited the amount of Rs. 70 lakhs as agreed and directed. It is further directed that the Union of India, Collector of Customs, Ahmedabad, and Assistant Collector of Customs, Kandla Port, Kutch, will be at liberty to encash the bank guarantee of Rs. 1,45,27,079/- (Rupees one crore forty five lakhs twenty seven thousand seventy nine only) furnished by the Company. However, it is clarified that the Department will give credit to the opponent-company of the amount paid by it as and by way of deposit in this Court. The applicant-Union of India will be at liberty to withdraw the amount deposited in this Court. Rule made absolute accordingly.

3. The Appellant filed the special leave petition against the said order which was also dismissed by this Court on 10-9-1993, inter alia, observing that it was not a case for interference with the order of the High Court as the Appellant had defaulted in the matter of payment of installments. The Bank Guarantee was, however, encashed to cover the amount up to Rs. 70 lakhs, as for encashment of the Bank Guarantee for the remaining amount, the Tribunal had granted stay which course of action was permitted by this Court as well dismissing the special leave petition of the Appellant.

4. The dispute of classification was ultimately settled by the Tribunal and as per that, a sum of Rs. 41,48,176/- became refundable to the Appellant being the difference between the duty payable and the duty actually paid.

5. This order attained finality. Thereafter, the Appellant filed application for refund of the said amount. This application was rejected by the proper officer on the ground that the doctrine of unjust enrichment would apply and since the

Appellant could not satisfy the authorities that the burden was not passed on the ultimate consumers, the Appellant was not entitled to refund. Against the order, the Appellant approached the High Court. The High Court has, by the impugned judgment dated 15-12-2005, allowed the refund to the extent of Rs. 17.50 lakhs and rejected the prayer for the refund of balance amount of Rs. 23,98,178/-. The High Court has held that insofar as the amount of Rs. 17.50 lakhs is concerned, the sum was deposited pursuant to the interim orders dated 4-5-1992 and in that order, it was specifically mentioned that if the Appellant ultimately succeeds, the said amount would be refunded. Insofar as the balance amount is concerned, the prayer for refund is rejected on the ground that it has been an amount deposited pursuant to order passed by the Court and in fact, the Appellant was made to deposit this amount as it committed default of the conditional order passed and upon that, the interim orders were vacated and as a consequence thereof, the Department had encashed the Bank Guarantee. Therefore, insofar as this amount is concerned, doctrine of unjust enrichment was applied. Against this order, the present special leave petition was filed in which leave was granted and that is how the present appeal arises for consideration as to whether the High Court order rejecting the refund in the sum of Rs. 23,98,178/- is valid or not.

6. It cannot be disputed that the doctrine of unjust enrichment as incorporated by Section 27 of the Customs Act applies in all such cases. The only exception to the applicability of the aforesaid doctrine is that such amount is not paid as duty but has been paid by some interim orders in some proceedings by the Court as pre-deposit then it is not treated as duty. The endeavour of the Appellant is to submit that the aforesaid amount of Rs. 23,98,178/- was also a pre-deposit and, therefore, the High Court has committed error in not directing the refund thereof.

7. We are unable to accept the aforesaid submission. On the facts of the case, as is pointed out above, it is only Rs. 17.50 lakhs which was deposited by the Appellant pursuant to the interim orders of the Court. The Court had directed the Appellant to deposit Rs. 70 lakhs. As far as the balance amount is concerned that could not be deposited. It resulted in vacation of the stay order. Thus, once the stay order was vacated, it was open to the Department to recover the amount of duty which was payable as per the orders passed at that time. The amount was, thus, recovered on encashment of the Bank Guarantee by the Department and it was on the basis of the order passed by the Court. The Court had, after vacating the stay order, only permitted the Department to encash the Bank Guarantee. We, thus, are of the opinion that as far as refund of this amount is concerned, it had to be decided in the light of the doctrine of unjust enrichment which was clearly applicable. The order of the High Court is, therefore, without any blemish. This appeal is, accordingly, dismissed.