

(2016) 07 SC CK 0062

In the Supreme Court Of India

Case No : Civil Appeal No. 3653 of 2007 with C.A. No. 3656 of 2007 and C.A. No. 1651 of 2008

Eastern Peripherals Ltd.

APPELLANT

Vs

Brihanmumbai Mahanagar Palika

RESPONDENT

Date of Decision : 29-07-2016

Acts Referred:

Citation : (2016) 339 ELT 497 : (2016) 8 Scale 55

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

Bench : Division Bench

Advocate : Mr. Prakash Shah, Advocate, Mr. Jay Savla, Advocate, Mr. Prabhat K.C, Advocate, Ms. Renuka Sahu, Advocate, Mr. Atul Yeshwant Chitale, Senior Advocate, Ms. Suchitra Atul Chitale and Mr. Chetan Sharma, Advocates, for the Appellant

Final Decision : Dismissed

Judgement

Civil Appeal No. 3653 of 2007

Civil Appeal No. 3656 of 2007

1. By common judgment rendered by the High Court of Bombay, the two writ petitions filed by the appellants herein have been dismissed accepting the contention of the respondent, Brihanmumbai Mahangar Palika, that for the purpose of payment of octroi duty when the goods are to be valued, customs duty shall also be added. The entire dispute in these appeals is, therefore, as to whether such customs duty is to be added to the value of goods for the purpose of payment of octroi under Bombay Municipal Corporation (Levy of Octroi) Rules, 1965 (hereinafter referred to as "Rules"). This issue has arisen in the following background:

The appellants herein had imported certain computer parts and claimed exemption from payment of customs duty thereupon invoking the provisions of Notification No. 133 of 1994 dated 22.06.1994. As per the aforesaid notification,

certain goods would not be liable for any customs duty if after the import of the goods they are manufactured into articles and those articles are exported. There are various conditions stipulated in the said notification to be eligible for exemption from payment of customs duty. We are not concerned with all other conditions mentioned therein as pointed out above. One of the conditions is that the goods are re-exported. Paragraph 3 of this notification allows this exemption even when part of the articles manufactured are allowed to be cleared outside the Santacruz Electronic Export Processing Zone (SEEPZ) under and in accordance with the Export-Import policy on the condition that where the goods are not excisable, custom duty is paid thereon and if they are excisable, excise duty is paid thereon. Since the said paragraph 3 is the bone of contention, we reproduce the same in its entirety :-

"3. Notwithstanding anything contained in this notification the exemption contained herein shall also apply to the said goods which on importation into India are used for the purposes of production, manufacture, processing or packaging of articles in a unit in the Zone and such articles (including rejects, waste and scrap material) arising in the course of production, manufacture, processing or packaging of such articles even if not exported out of India, are allowed to be cleared outside the Zone under and in accordance with Export-Import Policy and subject to such other limitations and conditions as may be specified in this behalf by the Development Commissioner of the Zone, on payment of duty of excise leviable thereon under section 3 of the Central Excises & Salt Act, 1944 (1 of 1944) or where such articles (including rejects, waste and scrap material) are not excisable, on payment of customs duty on the said goods used for the purpose of production, manufacture, processing or packaging of such articles in an amount equal to the customs duty leviable on such articles as if imported as such:

Provided that goods which have been repaired, reconditioned or re-engineered shall not be allowed to be cleared outside the Zone."

2. It is the case of the appellants that in terms of the relevant Export-Import policy, the appellants were entitled to clear 25 per cent of its production into domestic area on payment of excise duty calculated at the rate of 50 per cent of each of the duty of customs payable on the like goods manufactured outside India and the appellants, accordingly, during the period in question, i.e., April, 1992, to November, 1994, cleared the computer systems manufactured in the export processing zone in the domestic tariff area. For the purpose of octroi that is to be paid under the aforesaid Rules, the respondent-Corporation included the customs duty component as well for the purpose of arriving at the value of the goods on which the octroi duty is payable. This is so done by the respondent taking aid of Rule 2(7)(a) of the Rules 1965. This Rule reads as under: -

Rule 2(7)(a):

"The value of the articles as ascertained from original invoice plus shipping dues

insurance, custom duties, excise duties, countervailing duty, sales tax, transport fee, freight charges, carrier charges and all other incidental charges excepting octroi incurred or liable to be incurred by the importer till the articles are removed from the place of import."

3. As per the respondent-Corporation, since duty was paid on the said 25 per cent of produced articles which were released in the domestic area, customs duty became payable and, therefore, the Corporation was within its rights to include the said duty while arriving at the value of the goods.

4. From the reading of Rule 2(7)(a), it becomes clear that for ascertaining the value of the goods not only the original invoice but certain other charges like shipping dues, insurance, custom duty, excise duty, countervailing duty etc. are also includible in the value of articles if such charges are, in fact, incurred by the assessee or even "liable to be incurred by the importer". It was the case of the respondent-Corporation that since 25 per cent of the production was allowed to be cleared in the domestic market subject to payment of excise duty, equivalent to the custom duty, is added. We find that the aforesaid position taken by the respondent-Corporation does not flow either from the reading of Rule 2(7)(a) or paragraph 3 of Notification No. 133 of 1994 dated 22.06.1994.

5. Insofar as the notification is concerned, as mentioned above, the appellants were allowed to import the computer parts without payment of customs duty. Their claim that they were entitled to exemption from payment of custom duty was accepted by custom authorities. Further, as far as clearing 25 per cent of its production, i.e., articles/computers manufactured out of those goods outside SEEZ zone is concerned, the same is done as permitted under Export-Import policy. Since the condition stipulated in paragraph 3 of the notification is that on such articles produced by the importer, out of the goods that are imported, it is to pay excise duty amount equal to the customs duty leviable, if the goods are excisable, on such articles as if imported as such. This condition was fulfilled. However, in the instant case, we are concerned with the payment of octroi duty which was to be paid on the goods imported. Insofar as excise duty is concerned, the said excise duty was not paid on the goods imported. On the contrary, it was paid on the articles that were manufactured out of the goods which were imported. Therefore, the payment of excise duty on such manufactured articles would have no relation or connection with the goods that were imported by the appellants. Once we read and interpret the provisions of paragraph 3 of the notification in the manner stated above, obviously, there was no liability towards customs duty on these goods which were incurred or were liable to be incurred as mentioned in Rule 2(7)(a) of Rules, 1965. It is stated for the sake of repetition that insofar as customs authorities are concerned, they have not only granted exemption, they even allowed the clearance of 25 per cent of the production into the domestic area in terms of paragraph 3 of the exemption notification. Thus, as far as goods are concerned, they were fully exempted from payment of any customs duty. Therefore, no liability in this respect is either

incurred or was liable to be incurred and therefore, provisions to Rule 2(7)(a) for the purpose of adding the customs duty would not be attracted.

6. We, thus, allow these appeals and set aside the order of the High Court.

7. The appellants shall be entitled to consequential relief of refund of amount subject to other conditions.

Civil Appeal No. 1651 of 2008

8. In view of our order in Civil Appeal No. 3653 of 2007 and Civil Appeal No. 3656 of 2007, this appeal of Municipal Corporation is dismissed.