**(1994) 10 DEL CK 0009**

**In the Delhi High Court**

**Case No :** Civil Writ Appeal No. 3031 of 1994 and Civil Miscellaneous Appeal No''s. 5711 and 6211 of 1994

Exportos Apparel Group Ltd. APPELLANT

Vs

Union of India and Another RESPONDENT

**Date of Decision :** 28-10-1994

**Acts Referred:**
Constitution of India, 1950 — Article 77
Customs Act, 1962 — Section 25

**Citation :** (1995) 58 DLT 297 : (1997) 91 ELT 307

**Hon'ble Judges :** D.P Wadhwa, J;Cyriac Joseph, J

**Bench :** Division Bench

**Advocate :** A.K. Ganguly, Rajiv Nayar and Madan Lokur, for the Appellant;

## Judgement

D.P. Wadhwa, J.

(1) The petitioner, engaged in the business of import-export has filed this petition under Article 226 of the Constitution praying for a writ of mandamus commanding the respondents and or the customs authorities under the respondents to release its goods being the electronic integrated circuits imported by the petitioner. The petitioner also seeks a writ of prohibition restraining the respondents and other customs authorities from taking any adverse action against the petitioner. Detention or non-clearance of the aforesaid goods has also been questioned as being without jurisdiction. Lastly., a writ of certiorari is sought quashing circular dated 9 May 1994 issued by the Government of India in the Ministry of Finance, Department of Revenue (Central Board of Excise and Customs) (C.B.E.C. for short). By this letter the C.B.E.C. had instructed the officers of the customs under the Customs Act, 1962 (for short "the Act") not to follow the instructions issued by the Directorate General of Foreign Trade by its Circular dated 27 April 1994 on which the petitioner strongly relies.

(2) There are two respondents, namely, (1) the Union of India in the Ministry of Commerce (Directorate General of Foreign Trade), and (2) the Central Board of

Excise and Customs through the Director (Customs).

(3) The facts are quite in brief. An advance import license was issued on 26 April 1993 by the Joint Director General, Foreign Trade. Bombay, to Peico Electronics and Electricals Limited for import of integrated circuits (I.Cs.) and certain other items. The value of the license was Rs. 71,42,728.00 and it was valid for a period of 12 months. The resultant product, which the licensee was to export within a period of 12 months from the date of the issue of the license, was Radios (CKD/SKD) of the value of Rs. One crore (FOB). The licensee transferred this license to M/s. Hardware Trading Corporations who in turn re-transferred the same in favor of the petitioner. On the authority of the license. the petitioner imported T.Cs. (50.000 sets) of he value of Rs. 19.11.930. The petitioner filed its Bill of Entry for the purpose of clearance of these I.Cs. on 27 June 1994. Petitioner sought duty free clearance of the goods on the ground that I.Cs. were capable of being utilised in the manufacture of radio, i.e. the export product specified in the advance license which was enclosed with the Bill of Entry. The Assistant Collector of Customs was not satisfied that these I.Cs. could be used for the manufacture of radios. He was of the prima facie view that these I.Cs were required in the manufacture of T.V. sets. He, therefore. made the following endorsement on the Bill of Entry:-

"PARTY to explain with catalogue write up to prove that said ICs can be used in the export product, i.e. Radios, and also the invoice from mfr. required. The petitioner did not send any reply to this query and rather filed this writ petition on 20 July 1994 seeking the aforementioned reliefs. Petitioner says that the I.Cs imported by it can be used both for the manufacture of radios and T.Vs. It was stated that since export obligation had been met. the petitioner should have been allowed import of these goods without payment of any duty. Reliance was placed on Circular No. 8194 dated 2? April 1994 issued by the Directorate General of Foreign Trade (DGFT) in the Ministry of Commerce, Government of India. This circular was addressed to various authorities and we may reproduce the same in full :-

"TO(1) All Collectors of Customs and Central Excise; and (2) All Licensing Authorities. (3) Fieo Commodity Boards All EPCs All Chambers of and 1. Subject: Guidelines in respect of duty free licenses issued under duty Exemption Scheme-clarification-Reg.

NUMBER of representations have been received from exporters regarding non-clearance of their exports or imports by the Customs Authorities on account of enquiries being made with regard to the unit price of exports or the grade or the product, According to the exporters, such delays in the clearance of their consignment of exports or imports are causing them hardship.

2. THE matter has been considered in depth and it has been decided :-

(I)That the unit price as accepted by the Excise Authorities under Ar 4 Ar 4A procedure, or procedure of Gate Pass (GPI or GPII) of Central Excise may be accepted by the Customs Authorities for the purpose of exports both in respect of the Value Based and Quantity Based Advance licenses, irrespective of the fact that the exports have been made against the licenses issued before or after 14-9-93 and irrespective of fact that the items included in these licenses fall in the sensitive list notified on 14-9-93 vide Public Notice No. 163 (PN) 92-- 97 dated 14-9-93.

(II)The entries in the standardised notified Input-Output Norms in many cases are in generic terms. The duty free license holders are, Therefore, entitled to import an input of any specification or grade, including Plastic Polymers and other sensitive items, provided the rate of Customs duties on different grades is the same and provided that in respect of sensitive items the quantities or the values of these inputs are conforming to the quantities and values specified in the duty free license. After careful consideration of the matter and in relevation of the policy with the approval of Director General of Foreign Trade in terms of paragraph 21 of the Export and Import Policy 1992-97, it is hereby clarified that the Customs Authorities shall clear the imports as per duty free licenses (Value Based or Quantity Based) issued without insisting on the details of specification grades. The Customs Authorities shall also not insist upon the importers, including the transferees, of the Value Based or Quantity Based duty free licenses to establish that the same grade or specification of inputs being imported by them had been used in the export products.

3.It has also been learnt that the custom authorities in certain cases have permitted the exports on provisional basis. In light of the position clarified above, such consignments may -now be entered into the Deed by the customs authorities, so that the exporters are in a position to submit their documents to the licensing authorities for seeking redemption of their cases if eligible as per policy.

YOURS faithfully (P. VENKATESAN) Dy. Director General of Foreign Trade"

(4) On the basis of this circular it was submitted that export obligation of export of Radio''s (CKD SKD) had already been met and that electronic integrated circuits and micro assemblies had been separately shown under item 85-42 in the Customs Tariff Act and all the items mentioned under this heading attract a duty at the rate of 98 per cent and that the clarification given in the circular was applicable to a transferee of the license which the petitioner was.

(5) However, it appears, the Cbec did not accept the validity of this circular and issued its own guidelines on 9 May 1994 addressed to all authorities under the Act. Again we may reproduce the same :-

''TO All Principal Collectors All Director Generals All Collectors of Customs All Collectors of Central Excise All Collectors of Customs and Central Excise.

Sir, in respect of functions of Customs Officers-Instructions issued by Directorate General of Foreign Trade-regarding-

 

1.I am directed to say that it has been brought to the notice of the Board that Directorate General of Foreign Trade vide Circular No. Alc 8194 dated 27 April. 1994 issued from F. No. 2UU93-IPC-11 has issued guidelines to all Collectors of Customs and Central Excise with regard to valuation of export goods under Duty Exemption Scheme and also directed that they should allow clearance of inputs against licenses issued with generic descriptions without going into the question of grade of specifications to establish their nexus with the export product. The instructions issued by Dgft in relaxation of the policy in terms of paragraph 21 of the Exim Policy 1992-97, direct the Customs authorities to clear the-imports as per duty free licenses without insisting as details of specifications [grades. The instructions further direct that exports permitted provisionally should be entered into the Deed so that the exporters are in a petition to submit their cases for redemption to the Licensing authorities.

2.The issue has been examined by the Board and it has been decided that instructions issued by the DGFT. shall not be followed in so far as these instructions are not in conformity with the conditions of customs notifications and the instructions issued by he Board from time to time in this regard. It must be ensured that exemption from duty on inputs imported against duty free licenses under Duty Exemption Scheme are allowed strictly in terms of legal provisions of the Customs notifications and the instructions issued by the Board.

3.INall cases where instructions issued by any other Department or Ministry are not in conformity with the Customs Law notifications or the instructions issued by the Board the field formations should only follow the instructions issued by this Board and bring to the notice of the ''Board any conflict between the instructions issued by the Board and any other agency Ministry for further examinations at this end.

4.THE receipt of this Circular may please be acknowledged

Your''s faithfully, (SMT. S. GHOSH) Director (DRAWBACK)"

(6) In short, the case of the petitioner is that under the circular issued by the Dgft, the authorities under the Act could not question whether integrated , could be used for the manufacture of radios or TVs. and that they were bound by this circular which was issued by authority dealing with the import to the. country and export outside; and that it was for this authority to clarify as to what goods the import license covered. Mr. Ganguly learned counsel for. the petitioner, said that the customs authorities were bound by the clarification given by the Dgft and they had no jurisdication to go outside the same. He said the action of the Assistant Collector of Customs in detaining the goods or raising the query was without jurisdiction .As noted above, petitioner has. also questioned the validity of the guidelines issued by the Cbec by its circular dated 9 May 1994. Mr. Lokur, learned Counsel for the respondents, submitted that the Assistant Collector was ..performing ..quasi Judicial functions and no authority could interfere in his functions turn the purpose of assessment of duty. He said since the Assistant

 

Collector was prima facie of the view that the ICs could not be used for the resultant product, i.e. the radio, he was well within his right to raise the query and that the petitioner without complying with that rushed to this Court: He said it had been repeatedly held that the Customs Act was a complete ''Code and this writ petition. 21 Therefore, could not have been filed without exhausting the remedies under that Act. Mr. Lokur said adjudication proceedings could have been held under the Act and. if any question of law arose ultimately that could be referred to this Court. It was submitted the circular issued by the Dgft was against the provisions of the Notification. No. 203192 issued under section. 25 of the Act by the Government of India.in the Ministry of Fianance, Department of'' Revenue, under which notification various conditions had been prescribed, and that the. notification laid down the definition of "materials" which were allowed to be imported under the duty exemption entitlement scheme. The definition of ''material" is as under :-

"RAW materials components, intermediates, consumables, computer software and parts required for manufacture of export product "

(7) It was, Therefore, submitted that the Assistant Collector was well'' within his right to examine if the imported goods could be used for the manufacture of ''the export product, namely, Radios (CKD/SKD). Mr. Lokur said-the assessing authority was bound to give effect to the notification and circular issued by the Dgft or the guidelines issued by the Cbec were only for guidance and did not bind a quasi judicial authority. It was submitted that if goods under the import were found to satisfy the definition and other conditions as contained in the notification, the same shall be released .and that during the course of proceedings the circular issued by the Dgft shall be duly considered and shall be followed to the extent the said g.uidelines are in conformity with! the ''legal definition of "materials" ''as referred to above.

(8) The Supreme Court in Union of India (UOI) Vs. A.V. Narasimhalu, made a pointed observation that the Sea Customs Act, 1878, was a complete Code dealing .''with the liability, to pay. customs duty and for obtaining relief against excessive or erroneous levy and other matters related there to. Same is position with the Customs Act, 1962, which repealed the Sea Customs Act, 1878. There are various classes of officers of customs u/s of the Act and two of them are. Assistant Collector of Customs and Collector of Customs. These are-adjudicating authorities depending, upon the valuation of the goods and against their orders an aggrieved party can file an. appeal either before the Collector (Appeals) or to the Customs Excise and Gold (Control) Appellate Tribunal .Powers of revision also-exists with the Cbec collector of Customs, and the Central Government. In case a-question, of law arises, the matter can be referred to the High Court. Statement of case can also be referred to the High Court in certain cases and in certain cases appeal also lies to the Supreme Court from the orders of the Customs, Excise and Gold (Control) Appellate Tribunal. The authorities under the Customs Act, 1962, except the High Court and the Supreme Court, exercise quasi judicial

 

powers.) u/s 151A, Cbec may issue instructions to the officers of the customs for the purpose of uniformity in the classification of goods or with respect to levy of duty thereon, but no such instructions shall issue, so as to require any such officer of customs to make a particular assessment, or to dispose of a particular case in a particular manner, or so as to interfere with the discretion of the Collector of Customs (Appeals) in exercise of appellate functions. u/s 25 of the Act, if the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the official gazette, exempt generally or either absolutely, but subject to such conditions, goods of any specified description from whole or any part of duty of customs livable thereon. Notification No. 203192, on which reliance has been placed by the respondents, was issued u/s 25 of the Act. It is an instance of subordinate legislation and the notification is statutory in nature .The authorities under the Act are bound to act on this notification. As to what duties of customs are livable are mentioned in the Customs Tariff Act, 1975.

(9) Director General Foreign Trade is to be appointed by the Central Government under the Foreign Trade (Development and Regulation) Act, 1992. He is to advise the Central Government in the formulation of the export and import policy and shall be responsible for carrying out that policy (section 6). This Act has been enacted to provide for the development and regulation of foreign trade, for facilitating imports into and augmenting export from India, and for matters connected therewith or incidental thereto. The Customs Act, 1962, has been enacted to consolidate and amend the laws relating to customs. The : Customs Tariff Act, 1975, has been enacted to consolidate and amend the law relating to customs duties. It provides the rates at which duties of customs shall be levied under the Customs Act. Section 3 of the Foreign Trade (Development and Regulation) Act, 1992, gives powers to the Central Government to regulate imports and exports. This section is as under :-

"3(1)The Central Government may, by Order published in the Official Gazette, make provision for the development and regulation of foreign trade by facilitating imports and increasing exports.

(2)The Central Government may also, by Order published in the Official Gazette, make provision for prohibiting, restricting or otherwise regulating, in all cases or on specified classes of cases and subject to such exceptions, if any, as may be made by or under the Order, the Order, the import or export at goods.

(3)All goods to which any Order under sub-section (2) applies shall be deemed to be goods the import or export at which has been prohibited u/s Ii of the Customs Act, 1962 and all the provisions of that Act shall have effect accordingly." u/s 5 of that Act, the Central Government may, from time to time, formulate and announce, by notification in the Official Gazette, the export and import policy and may also, in like manner, amend that policy Dgft may clarify the description of the goods mentioned in the import license but when it comes to levy of duty of customs it has to be in accordance with the Customs Tariff Act, 1975, unless there is a notification u/s 25 of the Customs Act exempting the imported goods from payment of duty either in full or in part and that may again be subject to any conditions that may be imposed in that notification for claiming exemption from payment of duty of customs. 10. As to what is the effect of the circular dated 27 April 1994 issued by the Directorate General of Foreign Trade giving guidelines in respect of duty free licenses issued under duty exemption scheme would certainly be examined by the authorities adjudicating under the Customs Act. One thing is, however, clear that the guidelines issued by the Cbec by its impugned circular dated 9 May 1994 would appear to be valid as it merely enjoins upon the adjudicating authorities under the Customs Act in accordance with the exemption notification issued u/s 25 of the Act.

(10) The guidelines issued by the Directorate General of Foreign Trade and that by the Central Board of Excise and Customs may appear to be in conflict, but then the customs authorities have to act as per law and the notification No. 203/92 issued u/s 25 of the Customs Act, 1962, is a law. Under the Government of India (Allocation of Business) Rules, 1961, issued under clause (3) of Article 77 of the Constitution, all matters relating to the Customs Act and notifications issued there under are to be dealt by the Department of Revenue in the Ministry of. Finance, Government of India, and that under the Foreign Trade (Development and Regulation) Act, 1992, by the Department of Commerce in the Ministry of Commerce, Government of India. Then, in the Government of India (Transaction of Business) Rules, 1861, also issued under clause(3) of Article 77 of the Constitution, it is provided as to how the business allotted to a department is to be disposed of by, or under the general or special direction of the Minister-in Charge of the Ministry and the inter departmental consultations when a subject concerns more than one department and also previous concurrence of the Ministry of Finance in certain cases and particularly when the order involves any abandonment of Teveame.

(11) We farther find that the adjudicating authorities have not been made parties to the writ petition. It would have been. more appropriate, if the Assistant Collector of Customs had been made a party whose action is sought to be challenged. After examining all these provisions we are of the view that the stand taken by the respondents is correct. It'' is for the customs authorities to examine if the goods had been imported in terms of the license and what ''duty ''of customs, if any, is livable thereon. If aggrieved the. petitioner has remedy under the Act by way of ^appeal In this view of the matter also we do not wish to go into the merit of the controversy as may observation made by, us may prejudice the case of either of the parties. We will Therefore, dismiss the. petition.

 