(2010) 03 BOM CK 0021

In the Bombay High Court

Case No : Writ Petition No. 1449 of 2010

Global Exim APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 19-03-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 111, 112

Citation : (2010) 253 ELT 408

Hon'ble Judges : V.C. Daga, J;K.K. Tated, J

Bench : Division Bench

Advocate : Prakash Shah, PDS Legal, for the Appellant; R.V. Desai and R.B. Pardeshi, for the Respondent

Judgement

1. Heard.

Perused petition.

Rule, returnable forthwith.

Mr. Pardeshi waives service on behalf of the respondents.

2. The factual matrix lies in narrow compass:

By an Order-in-original dated 8th December, 2009, the Joint Commissioner of Customs (Export), Mumbai-II, Jawaharlal Nehru Customs House, Sheva, Tq. Uran, District Raigad held that the subject consignment sought to be imported by the Petitioner is in violation of Section 111(o) of the Customs Act, 1962 ("the Act" for short). Inasmuch as, the importer has failed to obtain necessary certificate of registration/import permit under the Insecticides Act, 1968 and thus, the goods were liable to be confiscated. He, further held the petitioner is also liable to pay penalty u/s 112(a) of the Act. In view of this finding, the goods sought to be cleared vide Bill of Entry No. 781840 dated 27th November, 2009 valued at Rs. 17,26,994/- were confiscated u/s 111(o) of the Act and the petitioner was directed to comply with the provisions of Insecticides Act, 1968 and was given an option to redeem the goods on payment of redemption fine of Rs. 2,30,000/- with penalty of Rs. 1,00,000/- u/s 112(a) of the Act.

3. Aggrieved by the aforesaid order, the petitioner invoked the appellate jurisdiction of the Commissioner of Customs (Appeals), who, vide order dated 10th December, 2009 allowed the appeal observing in paragraph Nos. 8 and 11, as under:

8. Secondly, I find that under the Foreign Trade Policy and Procedure, any item can be sourced indigenously against a transferable duty free authorization from an indigenous manufacturer through ARO facility or Invalidation Procedure in terms of Policy para 4.1.11 of the Foreign Trade Policy. Therefore the argument put forward by the appellant that no such permits shall be required if procured from indigenous manufacturers have some force in it as per the Foreign Trade Policy. Moreover, the said transferable DFIA specifically permits import of Boric Acid as an input item which are replenishment material for the exports also carried out and does not carry any condition of providing import permits by the importer. The Notification No. 2 issued by DGFT merely imposes a condition of producing imports permits issued by CIB and RC for the purpose of importing Boric Acid for Non-insecticidal use and have not specifically stated against any authorization issued where Boric Acid is one of the input item allowed as an import material as per norms. It is therefore clear that the appellant has also not violated any conditions under the Foreign Trade Regulation Act because the imported item is neither a Prohibited item nor a restricted item but importable the condition of producing CIB & RC Permit requirements.

11. In view of the above findings, I find no substance in the order passed by the Joint Commissioner of Customs and allow the appeal filed by the appellants. The requirement of CIB & RC permit is not required as already held by the higher judicial forums and therefore permits the import of Boric Acid without any condition. Accordingly, the redemption fine and penalty imposed on the appellant is also hereby set aside.

4. Being aggrieved by the aforesaid order dated 10th December, 2009 passed by the Commissioner of Customs (Appeals), the Revenue preferred an appeal before the Tribunal along with an application to stay effect and operation of the said order. The prayer for interim relief made at the instance of the Revenue was rejected by the Tribunal. With the result, the Revenue came under an obligation to implement the order dated 10th December, 2009 passed by the Commissioner of Customs (Appeals).

5. On being approached by the petitioner for implementation of the order dated 10th December, 2009, there was no response from the Revenue. There was no indication from the Revenue that they are ready and willing to implement the said order of the first appellate authority. Consequently, the petitioner was required to approach this Court by invoking writ jurisdiction under Article 226 of

the Constitution of India.

6. On being noticed, the Revenue appeared and prayed for time to challenge the order of the Tribunal rejecting their prayer for interim relief. Initially, the petition came up for hearing on admission before this Court on 23rd February, 2010, it was adjourned from time to time i.e. 2nd March, 2010, 9th March, 2010, 10th March, 2010, 15th March, 2010 to enable respondents to challenge the order rejecting their prayer for interim stay. Lastly, it was placed for hearing on today''s board. Respondents did not file petition to challenge rejection of their prayer for interim relief.

7. Learned Counsel for the petitioner, during course of submission submits that, in absence of interim relief in favour of the Revenue, they are bound to follow the order of the Commissioner (Appeals) since it binds them and that they failed to challenge the same.

8. In reply, Mr. Desai, learned Senior Counsel submits that as yet, they have not received a copy of the order of the Tribunal, whereby and whereunder, their prayer for interim relief was rejected.

9. On being asked, Mr. Desai submits that there is no written application made by the Revenue for certified copy of the order. However, oral prayer was made to the Tribunal. The procedure adopted by the Revenue to seek certified copy of the order is unknown to law. The Officer dealing with the matter is absolutely negligent in not applying for certified copy of the order. The Revenue is also negligent in not implementing the order passed by the appellate Tribunal. However, Mr. Desai still desires to challenge the said order on behalf of the Department. Considering the stiff attitude adopted by the Department, we cannot leave it to the sweet will of the Department to decide implementation of the order passed by the 1st appellate authority. In the aforesaid circumstances, we hold that the Revenue is bound to implement the order which is in favour of the petitioner. Since they could not obtain interim stay of the order impugned in the petition as such we direct the respondents to implement the order passed by the Commissioner of Customs (Appeals), subject to petitioner furnishing a bank guarantee in favour of the Revenue within one week from today for Rs. 3,50,000/-. The petitioner shall keep the said bank guarantee alive for eight weeks from the date of this order. In the event Revenue decides to challenge the order rejecting stay application, well within time, a separate orders with regard to bank guarantee can always be passed, failing which the bank guarantee shall automatically stands cancelled with the expiry of eight weeks from today.

10. So far as production of Certificate of registration/import permit as per the Insecticides Act, 1968 is concerned, the same shall be subject to the result of the appeal decided by the Tribunal. It is needless to mention that so far as other claims of the petitioner are concerned, it would be open for the petitioner to make appropriate prayer before the Tribunal. In the event of furnishing bank guarantee, Revenue shall implement the order within three days thereafter.

11. Rule is made absolute in terms of this order with no order as to costs.

