(1988) 07 MAD CK 0013

In the Madras High Court

Case No : Writ Petition No. 5917 of 1981

Gopalsamy Industries APPELLANT

Vs

M.M.T.C. RESPONDENT

Date of Decision : 28-07-1988

Acts Referred:
Customs Act, 1962 — Section 25(1)

Citation : (1989) 20 ECC 82 : (1989) 20 ECR 103 : (1989) 39 ELT 390

Hon'ble Judges : Swamikannu, J

Bench : Single Bench

Advocate : Raj and Raj, for the Appellant; P. Narasimhan, Senior Central Govt. Standing Counsel and K. Gopal, for the Respondent

Judgement

Swamikannu, J.—This Writ Petition coming on for hearing on this day upon perusing the petition and the affidavit filed in support thereof the

order of the High Court, dated 4.8.1981 and made herein, and the counter affidavit filed herein and the records relevant to the relating to the order

in prayer aforesaid on the file of the respondents herein comprised in the return of the said respondents herein to the Writ made by the High Court,

and upon hearing the arguments of M/s. Raj and Raj, Advocates for the petitioner, and of Mr. K. Gopal, Advocate for the 1st respondent, and of

Mr. P. Narasimhan Senior Central Government Standing Counsel on behalf of the 2nd respondent, and the 3rd respondent not appearing in

person or by the advocate, the Court made the following Order :-

The writ petition is for the issue of a writ of certiorari to call for the records of the 1st respondent in Met/SS/Strips/81 dt. 7.7.1981 and quash the

same.

2. It is inter alia stated in the affidavit sworn to by the Managing Partner of the

petitioner firm that the petitioner is engaged in manufacturing

stainless steel utensils, watch straps and pen nibs and the raw materials for the said manufacture are imported through the 1st respondent. For this

purpose the 3rd respondent sponsored the petitioner as being eligible for the allotment of imported stainless steel sheets. The said small strips are

eligible for a concessional rate of customs duty. The 1st respondent while fixing the price for the stainless steel strips, takes note of the concessional

rate of customs duty and the sale-note will prescribe that if the goods are actually used for the manufacture of watch straps and pen nibs, the price

will be in accordance with the concessional rate of duty. Otherwise the price will be in accordance with the non-concessional rate of customs duty.

The goods are allowed to be cleared on the basis of the concessional rate of duty provided the petitioner executes a bond with a bank guarantee

undertaking to produce an End-Use Certificate from the sponsoring authority to the effect that the stainless steel strips supplied to the petitioner has

been utilised for the manufacture of watch straps and pen nibs only, and in default the petitioner has to pay the difference between the concessional

and non-concessional duty. As per the above terms the petitioner had agreed to buy 0.500 M.T. and 1.500 M.T. of stainless steel strips

respectively from the 1st respondent for the manufacture of watch straps. The petitioner paid the price of the goods at the concessional rate and

lifted the same. The goods were fully utilised for the manufacture of watch straps. It is further submitted that the finished product of watch straps in

the first case weighs 397.550 kgs. as against. 500 M.T. of stainless steel supplied and 1189.890 kgs. in the case of second item of manufacture as

against 1.500 M.T. supplied. The differences in weight as indicated above were due to wastage in manufacturing process. While so, the petitioner

received a letter dt. 7.7.1981 from the 1st respondent stating that the Customs authorities are demanding differential duty for the wastage quantity

mentioned in the End-Use Certificate and that the petitioner should remit the difference of Rs. 8152.56 and further threatening the petitioner to

recover the amount from the bank which gave bank guarantee for the amount. According to the petitioner the said demand notice

Met/SS/Strips/81 dated 7.7.1981 of the 1st respondent is illegal and in violation of the principles of natural justice. Hence the present writ petition.

3. On behalf of the 1st respondent a counter affidavit has been filed by the Joint Divisional Manager of the 1st respondent, wherein it is inter alia

stated that on a comparative study of the End-Use Certificates produced by the petitioner will clearly show that the petitioner-manufacturer had

not actually consumed all the quantity released to him. The 1st respondent being a canalising agent for the import of stainless steel sheets/strips had

imported and supplied stainless steel strips of sizes 30 BC x 75 mm to the petitioner herein. The petitioner in turn received 500 kgs. and 1500 kgs.

and later produced End-Use Certificate for 307.55 kgs. and 1189.990 kgs. The above differences in quantity had not been accounted for by the

petitioner. Therefore, as per the conditions in the bond executed by the petitioner the petitioner has to pay the amount equal to difference between

the duty actually payable and that paid if the goods were not actually used for the purpose of manufacture of watch straps. Hence the impugned

notice has been issued by the 1st respondent to recover a sum of Rs. 8152.56 from the petitioner.

4. According to the petitioner, the entire stainless steel, which had been given to the petitioner under concessional duty had been fully utilised for

the manufacture of watch straps and the difference between the actual weight of raw material supplied and the finished products was due to

wastage incurred in the process of manufacture. What we are concerned is whether such wastages come within the purview of Customs

Notification dated 15.7.1977. The Customs Notification No. 152/77 dt. 15.7.1977 reads as follows :

In exercise of the powers conferred by sub-section (1) of Section 25 of the Customs Act, 1962 (52 of 1962), and in supersession of the

notification of the Government of India in the Department of Revenue and Banking, No. 78-Customs, dated the 18th June, 1977, the Central

Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the goods specified in the column (2) of the Table

hereto annexed and falling under sub-heading No. (2) of Heading No. 73.15 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975)

when imported into India for the purpose or purposes specified in column (3) of the said Table, from so much of that portion of the duty of

customs leviable thereon, which is specified in the First Schedule, as is in excess of the rate specified in the corresponding entry in column (4) of the said Table :

Provided that if the goods specified in Column (2) against Sl. No. 1 of the said Table are imported for the manufacture of all or any of the articles

specified in the corresponding entry in columns (a) and (b) in Columns (3) thereof :

(i) In respect of the said goods as are of a thickness of 16 EG or more, the importer or the manufacturer, as the case may be, binds himself by the

execution of a bond in such form and for such sum as may be specified by the Asst. Collector of Customs, to pay, on demand, in respect of such

quantity of imported stainless steel strips, plates and sheets, as is not proved to the satisfaction of the Asst. Collector of Customs to have been

used for such manufacture, an amount equal to the difference between the duty leviable on such quantity but for the exemption contained herein

and that already paid at the time of importation.........

(ii) . . .

(iii) . . .

5. On behalf of the 2nd respondent Mr. P. Narasimhan, Senior Central Government Standing Counsel, submits that there is no specific provision in

the said notification relating to wastage occurring in the course of manufacture. A careful reading of the above notification, clearly shows that the

imposition of any standard duty cannot at all be attracted unless it is proved to the satisfaction of the Assistant Collector of Customs that the entire

metal that had been supplied was not used for the purpose of manufacture, for which the metal had been supplied. This is clear from proviso (1) of

the Notification No. 152/77, dt. 15.7.1977 of the 1st respondent, which runs as follows :-

Proviso (1) of Notification 152/77, dated 15.7.1977.

In respect of the said goods as are of a thickness of 16 BG or more, the importer or the manufacturer, as the case may be, binds himself by the

execution of a bond in such form and for such sum as may be specified by the Assistant Collector of Customs, to pay on demand in respect of

such quantity of imported stainless steel strips, plates and sheets as is not proved to the satisfaction of the Asst. Collector of Customs to have been

used for such manufacture, an amount equal to the difference between the duty leviable on such quantity but for the exemption contained herein and that already paid at the time of importation.

6. In this context it is relevant to note that in the letter written by the 1st respondent it is clearly mentioned that out of the total quantities of metal

released namely 0.500 M.T. and 1.500 M.T. the actual quantities consumed were 0.39755 M.T. and 1.189 M.T. and wastages were 0.10245

M.T. and 0.311 M.T. respectively. Further as per the said letter, the differential amount for 0.41345 MT works out to Rs. 8152.56 at Rs.

18960/- per MT on concessional and non-concessional rates. There is absolutely no authority shown that when the entire metal supplied under the

concessional rate has been utilised for the manufacture of watch straps and pen nibs, etc., if there is any wastage in the process of manufacture,

whether there could be imposition of this duty on such wastages. The Customs Notification 152/77, dt. 15.7.1977 does not contemplate such

provision for imposition of such duty on wastages occurring in the process of manufacture. Further it is not the case of respondents that the

petitioner had kept away some of the raw materials supplied to him with some ulterior purposes. The 2nd respondent clearly admits that there is no

specific provision available in the Customs Notification above extracted as to how the wastages occurring in the process of manufacture, can be

dealt with for levying standard duty. In the absence of any such specific provision for imposition of standard duty on wastages as occurred in the

present case, it is not open to the authorities concerned to levy standard duty on such wastages and any such imposition of standard duty in the

absence of specific provision in the Notification issued by the Customs under Ref. No. 152/77 dated 16.7.1977 to that effect is not legal and is

contrary to law.

7. It is again and again submitted by the learned counsel for the first respondent that the petitioner is accountable for the entire quantity of raw

material supplied to him. As already stated, that when once it has been established that the entire raw material supplied to the petitioner has been

fully utilised for the purpose of manufacture, for which the raw material has been supplied and in the absence of any specific provision in the

Customs Notification No. 152/77, dated 15.7.1977 relating to wastages as occurred in the instant case, the contention of the first respondent

cannot be accepted. Under these circumstances, I find that the demand for payment of standard duty is wrong is not sustainable in law.

8. In the result, the writ petition is allowed. No costs.

