(1992) 03 CAL CK 0009

In the Calcutta High Court

Case No : Civil Order No. 9653 (W) of 1986

Howrah Indl. Estate Bonded Warehouse APPELLANT

Vs

Collector of Customs RESPONDENT

Date of Decision : 02-03-1992

Acts Referred:
Customs Act, 1962 — Section 108, 2(45), 3, 4, 4(2)

Citation : (1992) 59 ELT 530

Hon'ble Judges : Suhas Chandra Sen, J

Bench : Single Bench

Advocate : Goutam Chakraborty and D.K. Sasmal, for the Appellant;P.K. Dutta, for the Respondent

Judgement

Suhas Chandra Sen, J.—The petitioner carries on business, inter alia, of running Public Bonded Warehouse since October, 1980. The warehouse is situated at premises No. J-14, Industrial Estate, Balitikuri, Howrah. The warehouse is utilised by importers for storage of imported goods without payment of duty u/s 57 of the Customs Act, 1962.

2. Sections 57 and 58 are as under:

"S. 57. Appointing of public warehouse. - At any warehousing station, the Assistant Collector of Customs may appoint public warehouses wherein dutiable goods may be deposited without payment of duty.

S. 58. Licensing of private warehouses. - At any warehousing station, the Assistant Collector of Customs may license Private warehouses wherein dutiable goods imported by or on behalf of the licensee, or any other imported goods in respect of which facilities for deposit in a public warehouse are not available, may be deposited without payment of duty".

3. Warehousing station has been defined in Section 2(45) as a place declared as Warehousing station u/s 9. There is no dispute that the place at which the petitioner has been permitted to run a Public Bonded Warehouse is a

warehousing station. There appears to be a good deal of confusion as to the true nature of the Public Bonded Warehouse and the Private Bonded Warehouse in the Customs Department itself. The petitioner was granted a licence sometime in 1980 to run a Private Warehouse. The licence was granted in a printed form issued by the Collectorate of Customs. The printed form is under the Heading "Licence for Private Bonded Warehouse" and contains the following recitals:-

"The undermentioned godown being the property of Mr./M/s ... is hereby licensed u/s 58 of the Customs Act, 1962, as amended, as a Private Bonded Warehouse for storage of...."

There is no dispute that the petitioner was granted a licence in that form in 1980. The licence was renewed in 1981 in prescribed form issued by the Collectorate of Customs. The Heading of the form of renewal is "Renewal of Licence for Private/Public Bonded Warehouse". In the body of the form it is printed" ... issued/appointed U/Sec. 57/58(1) of the Customs Act, 1962 in respect of Godown/Private Warehouse Number ...". In the licence of the petitioner, in the Heading, the word "Private" was scored out. But in the body of the licence Sec. 58(1) was scored out. The result was that the petitioner was granted a renewal licence for Public Bonded Warehouse according to the Heading of the Licence whereas in the body of the licence it has been recorded that the petitioner has been appointed u/s 57 of the Customs Act, 1962. This is the result of scoring out of Sec. 58(1) from the body of the licence. This practice was followed in the years 1982 and 1983. Sometime in 1984 the petitioner was informed that the petitioner''s licence had not been renewed for storage of imported goods without payment of duty. Thereupon the petitioner moved a writ petition challenging the decision of the Customs Department.

4. The writ petition was disposed of by, inter alia, the following direction :-

"It is not necessary for me to go into the dispute as above. Now that the licence has expired, it is for the petitioners to make application for fresh licence and for the respondents to consider the same in accordance with law. If the petitioners have already made an application for fresh licence, that be considered by the respondents in accordance with law, within a period of eight weeks from the date of communication of this order. If such application has not been made, the petitioners are directed to do that and that be considered by the respondents in accordance with law as expeditiously as possible".

5. The petitioner duly applied for extension of licence for the subsequent years. The Assistant Collector of Customs served a notice to the petitioner requiring the show cause why renewal or extension of the licence to operate a Public Bonded Warehouse should not be refused. It is alleged in the show cause notice that -

"In the instant case while granting the temporary licence to operate Public Bonded Warehouse for limited period the Asstt. Collector of Customs did not take into consideration the existing instructions, conditions, limitations and restrictions."

6. The petitioner duly gave a written reply. The Collector of Customs decided to cancel the licence granted to the petitioner and directed no further licence to be issued to the petitioner. The grievance of the petitioner is that there is no allegation of mismanagement against the petitioner. The only allegation for cancellation of the licence or not to renew the licence is that the Assistant Collector of Customs had not taken into consideration the existing instructions, conditions, limitations and restrictions. In other words the licence was issued by the Assistant Collector contrary to the direction and instruction issued by the Customs Department. The basic principle that has to be borne in mind in the cases of licensing of business is that no one can claim a licence to carry a business as of right. But if the Government issues a licence and person sets up a business on the basis of that licence, the Government should not refuse to extend that licence arbitrarily because the result of revocation or non-continuance of the licence will be disastrous for the licensee. He will have to dismantle a business set up at great cost and expenditure. This point has been made clear by S.A. do SMITH in the Book "Judicial Review of Administrative Action" at page 197 in the following words :-

"Non-renewal of an existing licence is usually a more serious matter than refusal to grant a licence in the first place. Unless the licensee has already been given to understand when he was granted the licence that renewal is not to be expected, non-renewal may seriously upset his plans, cause him economic loss and perhaps cast a slur on his reputation. It may therefore be right to imply a duty to hear before a decision not to renew where there is a legitimate expectation of renewal, even though no such duty is implied in the making of the original decision to grant or refuse the licence".

7. The Customs Department in the instant case allowed the petitioner to start a business and has now decided to stop the business of the petitioner altogether. The Collector of Customs has passed a reasoned order in which he has stated why the decision not to renew the licence of the petitioner had been taken. He has observed - "although the Asstt. Collector to exercise this authority has been curtailed by the Govt. of India in terms of Section 5 of the Customs Act by issuing all necessary executive instructions. In terms of the Govt. of India''s letter dated 7th July, 1980, only the Collector of Customs is authorised to appoint public warehouses wherein dutiable goods may be deposited without payment of duty. Since the licence granted to the said firm was not by the appropriate authority as mentioned in the said order of the Govt. of India, I hold that the licence has been granted illegally and without authority. In this connection, it may be stated that even the Additional Collector of Customs cannot grant licence for public warehouse in view of the above referred specific orders of the Govt. of India. Taking into consideration this fact, I hold that the licence should not be renewed."

8. This reasoning of the Collector on the face of it appears to be erroneous and contrary to law. Section 3 of the Customs Act enumerates the classes of officers

of Customs, namely :-

(a) Collectors of Customs;

(b) Collectors of Customs (Appeals);

(c) Deputy Collectors of Customs;

(d) Assistant Collectors of Customs; and

(e) Such other class of officers of customs as may be appointed for the purposes of this Act.

9. Sections 4 and 5 are relevant for the purpose of this case and are set out as under:

"S. 4. Appointment of officers of Customs.

(1) The Central Government may appoint such persons as it thinks fit to be officers of customs.

(2) Without prejudice to the provisions of sub-section (1), the Central Government may authorise the Board, a Collector of Customs or a Deputy or Assistant Collector of Customs to appoint officers of customs, below the rank of Assistant Collector of Customs."

"S. 5. Powers of officers of Customs.

(1) Subject to such conditions and limitations as the Board may impose, an officer of customs may exercise the powers and discharge the duties conferred or imposed on him under this Act.

(2) An officer of customs may exercise the powers and discharge the duties conferred or imposed under this Act on any other officer of customs who is subordinate to him.

(3) Notwithstanding anything contained in this section fa Collector (Appeals)] shall not exercise the powers and discharge the duties conferred or imposed on an officer of customs other than those specified in Chapter XV and Section 108".

10. The Central Government alone can appoint Customs officers. The Central Government, however has been empowered to authorise the Board or the Collector of Customs or the Deputy or the Assistant Collector of Customs to appoint officers of Customs below the rank of Assistant Collector of Customs. The provision of Section 4(2) clearly recognises the importance of the position of the Assistant Collector of Customs in the Scheme of this Act.

11. Sub-section 1 of Section 5 enables the Central Government to impose limitation and condition upon the exercise of the power and discharge of duties of the customs officers. If a Collector is appointed by the Central Government, he is entitled to exercise all the powers that are vested in the Collector under the Act. But the Board may lay down the condition and limitation within which the power

may be exercised. The Board may impose territorial restriction on that power. The jurisdiction of a Collector appointed in Bombay may be limited to the State of Bombay. Similarly there may be other restrictions on the basis of subject matter or pecuniary jurisdiction. But there is nothing in sub-section 1 of Section 5 which empowers a Board to enlarge the scope of the statutory jurisdiction of a Collector. If certain functions have to be done by the Assistant Collector of Customs under the provision of the Customs Act, the Board cannot by a direction take away the jurisdiction of the Assistant Collector and bestow the same upon the Collector.

12. Sub-section 2 of Section 5, however, enables a superior customs officer to exercise the powers and discharge the duties of an officer subordinate to him. Under this provision a Collector of Customs may even do the job of appraising of imported goods if the exigency of the situation so demand. If the Collector of Customs deems it necessary, he may take it upon himself to do the duties conferred upon an Assistant Collector of Customs.

13. But that is not what has been done in this case. The Collector has not decided for the purpose of administrative convenience to take upon himself the power and function vested upon the Assistant Collector u/s 57 of the Customs Act. The Collector appears to be of the view that in terms of a letter written by the Government of India dated 7th July, 1980 only the Collector of Customs was empowered to appoint public warehouse. There is nothing in the Act, which empowers the Central Government to divest the statutory power of an Assistant Collector and vest the same on the Collector. Section 5 of the Customs Act does not empower the Central Government to interfere with the jurisdiction of the Assistant Collector u/s 57 in any manner.

14. Moreover, the Central Board may impose conditions and limitations on the exercise of statutory power of a Customs officer. The provision of sub-section 1 of Section 5 do not empower the Central Board to enlarge the scope of the statutory jurisdiction of any officer including the Collector of Customs. Under sub-section 2 of Section 5 the Collector, however, may if he so thinks fit in the interest of administrative convenience, exercise the statutory powers and discharge the statutory duties of an Assistant Collector of Customs. But the Collector has not done that in this case. In the impugned order the Collector does not state that the Board has taken away the jurisdiction of the Assistant Collector u/s 57 and conferred the said jurisdiction upon the Collector. All that the Collector states in the impugned order is that the Central Government has taken away the jurisdiction of the Assistant Collector by issuing necessary executive instructions. If that be the case, then the Central Government has acted de hors the provision of the Customs Act. Copies of various General Orders including the order contained in the letter dated 7th July, 1980 issued by the Government of India have been handed up in Court. The letter dated 7-7-1980 merely indicates the intention of the Government in the matter of providing warehousing facilities in Inland Warehousing Station. Certain guidelines have

been laid down in that letter. The problems faced by the Collector was about considerable procedural and other difficulties and of possible risks to revenue due to lack of customs expertise in interior. In the letter it was stated that henceforth the Board will declare a place as a warehousing station. There should be as few a number of places as possible which should be regarded as warehousing station. The following guidelines were mentioned in that letter :-

(a) Places should be recommended for declaration as warehousing stations having regard to, inter alia, needs of the Trade and Industry. The Collector was to exercise due care in selecting the places. It should be satisfied about the need for declaring such place as warehousing station.

(b) Once a place was declared to be Warehousing Station, the Collector will himself exercise the power to appoint the public warehouse.

(c) The Central Warehousing Corporation (C.W.C.). had vast experience in running warehouse to begin with only the warehouses run by the C.W.C. may be appointed as public warehouses.

(d) At places where a public warehouse had been appointed, no fresh private licence shall be granted and the existing licences should be gradually withdrawn when they expire. A suitable Public Notice was directed to be issued immediately on the lines indicated in the above letter dated 7-7-1980.

15. The Public Notice, however, was of limited scope and provided, inter alia, as under :-

1. The Board has noted that while there is need for provision of such facilities at selected places, it is also important to ensure that the number, location of these places are such that due provision could be made for adequate and expert customs staff to provide the corresponding services.

2. It has accordingly been decided that, rather than licensing private warehouses in the interior, Public Warehouses will be appointed at selected places keeping in view the requirement of the Trade and Industry, the proximity to the ports of import, and the availability of customs expertise.

3. Such warehouses in inland areas will be managed and controlled by the Central Warehousing Corporation, which has undertaken to provide the service to the Trade and Industry efficiently and at reasonable cost.

4. In the warehouses in the interior, warehousing of only such goods will be permitted as are either industrial raw materials or component parts.

5. This policy has been adopted in order to provide requisite facilities to the Trade and Industry to the extent possible and also to ensure, at the same time, that revenue interest stand fully safeguarded through the provision of adequate and expert customs staff places in the interior.

6. The warehouse owners/Trade concerned will be required to pay for the

customs staff employed, for the purpose on a cost recovery basis.

16. There is no indication in the Public Notice that the statutory power of the Asstt. Collector was to be exercised by the Collector. As I have already held earlier in the Judgment that the power of Asstt. Collector u/s 57 could only be modified or curtailed by the Collector. It could not be modified by merely writing a letter modifying the powers of the Assistant Collector by the Central Government. Therefore, I am of the view that the jurisdiction of the Assistant Collector u/s 57 had not been taken away in any manner by any Appropriate Authority. Therefore, the Collector was clearly wrong in holding that the Assistant Collector have no jurisdiction in this matter.

17. There were some arguments advanced on the scope of the letter dated 7th July, 1980 about the Public Notice. On behalf of the petitioner it was sentenced that the Notice related to warehousing facilities in inland warehousing station. The petitioner was not carrying on any business at any inland warehousing station. On behalf of the respondents it has been pointed out that the petitioner was carrying on business at Howrah. "Inland Warehousing Station" has not been defined in the Act. It is not necessary for me to decide this question at this stage.

18. Another point was urged on behalf of the respondent that only a Public Body could be appointed u/s 57 to run a public warehouse. That does not appear to be the meaning of Section 57. It empowers the Assistant Collector of Customs to appoint public warehouses. This can only mean warehouses where public may deposit goods without payment of duty. The Government, may as a matter of policy, decide to appoint godown owned by the Central Warehousing Corporation as Public warehouses. But the Act does not require that only warehouse owned by Government or Government Undertaking will be treated as public warehouses.

19. On behalf of the petitioner it may be pointed out that a private organisation namely, the Bengal Bonded Warehouse, has been appointed to run a large number of Bonded Warehouses. It has been alleged in the petition that the petitioner''s business has been stopped to enable Bengal Bonded Warehouses, a Private Body, to monopolise the business of Public Bonded Warehouse. In the Affidavit-in-Opposition this allegation made in paragraph 46 of the petition has been denied in an evasive manner. The fact that the Bengal Bonded Warehouse has been appointed to run public warehouses at a number of places has not been denied. But it, has been denied that there is any complicity with the Bengal Bonded Warehouse on the part of the petitioner.

20. An important question has been raised in this connection about discrimination between two equally circumstanced parties. The contention made on behalf of the respondent is that no Private Warehouse can be appointed as a Public Warehouse u/s 58. But the Bengal Bonded Warehouse is a Private Body. The allegation which has not been denied is that the Bengal Bonded Warehouse has been appointed as a public warehouse. It has been contended on behalf of the respondent that no one has any vested right in a mistake committed by the

Government. The Government or a Government Body cannot be called upon to commit the same mistake over and over again. I am prepared to uphold the contention that if the Bengal Bonded Warehouse was appointed a public warehouse by mistake the petitioner cannot as a matter of right claim that the same mistake must be committed in his own case. The petitioner as well as the Bengal Bonded Warehouse Association are Private Organisations. If the stand taken by the Customs Department is right, then both were appointed public warehouses by mistake u/s 57 of the Customs Act. It has not been explained why the Collector of Customs has taken the view that the petitioner as a Private Organisation cannot be appointed to run a public warehouse whereas the Bengal Bonded Warehouse Association may be allowed to carry on its business of running public warehouses at the same time.

21. In the affidavit-in-Opposition it has been stated by Sukhendu Chatterjee, Assistant Collector of Customs, the respondent No. 2 -

" I categorically deny that the said alleged impugned order has been passed mala fide or with an alleged ulterior motive to allegedly benefit a private bonded warehouse namely the Bengal Bonded Warehouse or that in view of the said order of the respondent No. I the said Bengal Bonded Warehouse would be able to allegedly monopolise the business of Public Bonded Warehouse or that the said order denies equality of opportunity of trade to inter alia, the petitioners or is allegedly illegal or null or void or allegedly violative of Article 19(1)(g) of the Constitution or that the respondents are allegedly seeking to deprive the petitioner of property without the authority of law or in alleged violation of Article 300A of the Constitution or in alleged violation of Article 14 of the Constitution or that the said order is arbitrary or unreasonable as wrongfully alleged".

22. There is no averment in the affidavit-in-opposition that the appointment and/ or licence granted to Bengal Bonded Warehouse Association has been cancelled or is going to be cancelled. There is also no averment that Bengal Bonded Warehouse Association is a Public Body. The fact that the Bengal Bonded Warehouse Association has been allowed to carry on business as a Public Warehouse u/s 57, has not been denied. There is no averment in the Affidavit-in-Opposition that on discovery of the mistake the appointment of Bengal Bonded Warehouse Association as Public Warehouse has been cancelled. Although a suggestion was made from the court, a supplementary affidavit was not filed to clarify the position. In the Affidavit-in-Reply it has been asserted by the petitioner that the Bengal Bonded Warehouse is still carrying on business as a Public Bonded Warehouse.

23. The respondent cannot be heard to say that he has committed a mistake and has persisted in that mistake in one case but has decided to rectify that mistake in the case of the petitioner.

24. Therefore, I am of the view that this writ petition must succeed. There will be an order in terms of prayers (a)(i)(ii) and also an order in terms of prayer (b).

25. I, however, make it clear that I have not held that the petitioner is entitled to run a public warehouse as of right under the provision of Sec. 57 or Sec. 58 of the Customs Act. I have held that the decision of the Collector of Customs that the Assistant collector had no jurisdiction to appoint a public warehouse u/s 57 is erroneous. I have also held that from the facts placed before the Court that Bengal Bonded Warehouse Association and the petitioner are equally circumstanced. The respondent cannot lawfully cancel the appointment or licence of the petitioner to run a Public Bonded Warehouse on the ground that it is a-Private Body and at the same time allow the Bengal Bonded Warehouse Association another Private Body, to run a Public Bonded Warehouse.

26. I make it clear that it will be open to the Customs Department to act in accordance with law and take a suitable decision on this controversy by passing a fresh order after review of all the facts and circumstances of the case.

27. The writ petition is finally disposed of as above.

There will be no order as to costs.

Prayer for stay of operation of this order is refused.

