

(2003) 11 DEL CK 0128

In the Delhi High Court

Case No : CW No"s. 3388 of 1996 and 1256 of 1997

Indo Exim

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 18-11-2003

Acts Referred:

Citation : (2003) 8 AD 392 : (2004) 109 DLT 257 : (2004) 72 DRJ 80 : (2004) 113 ECR 737 : (2004) 165 ELT 506

Hon'ble Judges : Badar Durrez Ahmed, J

Bench : Single Bench

Advocate : Rajesh Rawal, for the Appellant; Rajender Nischal, for the Respondent

Judgement

Badar Durrez Ahmed, J.—These two petitions raise common issues arising out of similar fact situations and relating to identical licenses and, Therefore, are being disposed of together by this common judgment.

2. The petitioner is aggrieved by the fact that although it held a valid value based Duty Free Advance license for the import of goods specified therein, it was not permitted to import the said goods (in this case "Brass Scrap") without payment of duty. The brief facts are that a duty free license was issued to Amity International, New Delhi. The license was transferable and the same was transferred to the petitioner on 29.01.1996. In the meanwhile, the license had been revalidated up to 21.06.1996. The port of registration in the license was mentioned as "Mumbai". The petitioners' goods arrived in Delhi on different dates and, Therefore, the petitioners sought transfer release advices from the customs authorities for the clearance of the goods at Delhi under the license without payment of duty. This was refused by the customs authorities citing the ground that the original license had been obtained by Amity International on misrepresentation of certain facts. In fact, the only ground taken by the respondents, i.e., the customs authorities in this case, is set out in paragraph 5 of their counter-affidavit in CW3388/1996, which is also relied upon in the other

writ petition, i.e., and, which reads CW1256/1997, as under:-

"5. With further reference to the facts of the present case, I say that pursuant to the application for value based advance license preferred by M/s Amity International, advance license bearing No. 0538584 for the import of brass scrap and stainless steel balls valued at US\$.60, 000/- was issued. In the application the price of brass scrap was declared to be Rs. 11, 074/- per Kg. whereas the actual price of brass scrap is Rs. 44/- per kg. approximately. In other words the Applicant declared the brass scrap prices to be more than even the price of Silver per kg. I say that subsequently the said license were transferred to the present Petitioner and the present Petitioner is claiming to clear the goods against the said license at the current market value. I further submit that since the aforesaid license is value based advance licenses, there is no quantity restriction for the item under import viz. Brass Scrap. In the circumstances the entire license values can be utilised even for a single item with the result more quantity of goods can be imported than what is originally meant for or sought to be used in the export products. I say that with the result, the Petitioner is able to import much more quantity than originally intended for, by the Licensing authorities as the license value is arrived at USD.316400 per Metric Ton at prevailing price as against actual import price of US.\$1500 per M.T."

3. From the above, it is clear that the only reason for the customs authorities in not releasing the goods of the petitioners without payment of duty was that the licenses had been obtained upon misrepresentation. It is pertinent to note here that by an order dated 13.11.1996, this Court had permitted the petitioners to have the goods released on assessment of value by the customs authorities and payment of duty as livable in accordance with law. The petitioners got the goods released on payment of duty as was calculated by the customs authorities. The petitioners' grievance is that since they held valid value based duty free advance licenses, the goods ought to have been permitted to be imported without payment of duty. The fact that duty has been charged from them for the release of the same goods, necessitates refund of the same to the petitioners. The petitioners have also, although not specifically prayed for in the petitions, requested that the licenses be revalidated for a further period of one year.

4. Learned counsel for the petitioners has referred to the decision of the Supreme Court in the case of Commissioner of Central Excise, Bolpur v. Ellenbarrie Industrial Gases Ltd: 2003 (151) ELT SC and in particular to the following observation in paragraph 13 thereof:-

"13. To be noted that the licensing authority having taken no steps to cancel the license. The licensing authority have not claimed that there was any misrepresentation. Once an advance license was issued and not questioned by the licensing authority, the Customs authorities cannot refuse exemption on an allegation that there was misrepresentation. If there was any misrepresentation, it was for the licensing authority to take steps in that behalf."

From the aforesaid observation of the Supreme Court, it immediately becomes clear that as long as the licenses are valid, the customs authorities cannot refuse exemption on the allegation that there was misrepresentation. It is for the licensing authority to take up the question of misrepresentation. This has not been done in the facts of the present case. The licenses were still valid and had not been cancelled by the licensing authority and the licenses have not been questioned at all by the licensing authority. It is the customs authorities who have raised the issue with regard to misrepresentation by the predecessors-in-interest of the petitioners at the time of obtaining the licenses. That cannot be a ground for denying the petitioners clearance of the goods duty free. The fact that the petitioners have by virtue of the interim order passed by this Court being permitted to clear the goods by payment of duty entitles them to refund of the same.

5. Accordingly, in view of the clear position as indicated by the Supreme Court, the customs authorities were not entitled to withhold the release of the goods of the petitioners and, Therefore, the petitioners are entitled to refund of the duty amount paid by them. The same be refunded by the customs authorities to the petitioners with interest @ 10% per annum.

6. As regards the second prayer of the petitioner, i.e., that the license be revalidated, the learned counsel for the respondents submitted that, in the first place, no such prayer had been specifically made in the writ petition and, secondly, that the revalidation cannot be done inasmuch as the licenses had virtually worked themselves out by the time the goods had been imported by the petitioners. It will be seen that the goods that were imported in CW3388/1996 bore the supplier's Invoice date of 14.06.1996 and the bill of lading was also of 14.06.1996. In other words, merely seven days were left for the expiration of the license in that case. In CW1256/1997 also, the goods that were imported bore supplier's Invoice dates of 14.06.1996, 07.06.1996, 26.06.1996, 18.06.1996 and 17.06.1996. In other words, the goods were supplied by the foreign suppliers at the fag end of the validity period of the licenses which were only valid up to 21.06.1996. Thus, in any event, the petitioners cannot claim revalidation, even if such a prayer were to be considered. Accordingly, this prayer of the petitioners, which has been made orally, cannot be acceded to.

7. In view of the discussions above, the petitioners' writ petitions are allowed to the extent that the amounts paid by way of duty pursuant to the order dated 13.11.1996 or earlier under protest for the clearance of the petitioner's goods be refunded to the petitioners with interest @ 10% per annum. The writ petitions are accordingly, disposed of with no order as to costs.