(1995) 07 BOM CK 0038

In the Bombay High Court

Case No : Writ Petition No. 1896 of 1987

Jayant Oil Mills Pvt. Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 13-07-1995

Acts Referred:

Citation : (1995) 60 ECR 380 : (1995) 79 ELT 552

Hon'ble Judges : S.H. Kapadia, J;M.L. Pendse, J

Bench : Division Bench

Judgement

Kapadia, J.—By this Petition, petitioners seek to challenge Show Cause Notice dated December 3, 1986 by which the Deputy Chief Controller of Imports and Exports has purported to exercise authority under Clause 3 read with Clause 8 of the Import (Control) Order, 1955, as it then stood, calling upon the petitioners to show cause why the petitioners should not be debarred from importing any goods and receiving Import Licence through S.T.C. and M.M.T.C. or any other Canalising Agency.

2. Facts giving rise to this Writ Petition, briefly, are as follows :

3. Petitioners'' imported Fatty Acids of the quantity of 3493.86 M.T. valued at Rs. 2,58,58,605 in 1984. Pursuant to the adjudication proceedings, the Collector, in view of Public Notice No. 47-ITC(PN) 83, dated 4th November 1983 came to the conclusion that importation of the Fatty Acids through Canalised Agency was not proper and accordingly directed confiscation of the goods. Being aggrieved by the said Order, petitioners preferred Appeal to Central Excise & Gold (Control) Appellate Tribunal. Similar Importers goods were also confiscated. In the circumstances, several Appeals came to be preferred to CEGAT. The said Appeals were heard together. Ultimately, by Judgment and Order dated 26th November 1986 the Tribunal came to the conclusion that importation was in accordance with law and in the circumstances, the Order of confiscation came to be set aside. The petitioners were further informed by letter dated 31st March 1987 that the Central Board of Excise and Customs had also decided to accept the

Appellate Tribunal''s decision dated 26th November, 1986. The Department did not challenge the Order of CEGAT dated 26th November, 1986 which, in the circumstances, became final. Surprisingly, on 3rd December, 1986 on the same grounds and for the same reasons, another Show Cause Notice is given calling upon the petitioners why they should not be debarred from importing the goods as stated above. The said Show Cause Notice dated 3rd December, 1986 is given by the Deputy Chief Controller of Imports & Exports. Being aggrieved by the Show Cause Notice, the present Writ Petition has been filed.

4. Mr. Madon, the learned counsel appearing on behalf of the petitioners contended that in the present case in view of the Order of CEGAT dated 26th November, 1986, the Deputy Controller of Imports & Exports was not entitled and had no authority in law to issue the above show cause notice on the same grounds. Mr. Madon contended that earlier CEGAT decided on 26th November, 1986 in favour of the petitioners. That by the said decision dated 26th November, 1986 CEGAT came to the conclusion that importation effected by the petitioners in 1984 of Fatty Acids under the three Bills of Entry dated 25 to 31 March, 1984 was valid and in accordance with law. Mr. Madon contended that by the decision of a quasi-judicial authority dated 26th November, 1986 which has acquired finality, as stated above, the importation of the above goods was held to be in accordance with the Import Licence and in the circumstances, it was not open to the Deputy Chief Controller to issue the impugned Show-Cause Notice. Mr. Madon contended that it is not open to the Deputy Chief Controller now to take a view contrary to the decision of CEGAT dated 26th November, 1986. Therefore, the impugned Notice is bad in law. Mr. Vyas, the learned counsel appearing on behalf of the respondents contended that earlier, the adjudication had taken place on a wrong interpretation of a Public Notice dated 11th November, 1983 inasmuch as according to Mr. Vyas in view of the subsequent judgments of the Supreme Court, that interpretation on the Public Notice dated 11th November, 1983 cannot be accepted as correct and, therefore, the Show Cause Notice issued by the Deputy Chief Controller on 23rd December, 1986 was in accordance with law. Mr. Vyas contended that no interference is called for in this Petition because the entire matter rests at the show cause notice stage.

5. We find considerable merit in the contention advanced on behalf of the petitioners. Once a quasi-judicial authority finally concluded the matter vide decision dated 26th November 1986 by holding that the importation was in accordance with Import Licence and once that decision has attained finality, it is not open to the Deputy Chief Controller, Imports & Exports to issue a show cause notice with regard to the same importation and record a finding contrary to the decision of the CEGAT. If the contention of Mr. Vyas is accepted and if the Deputy Chief Controller is permitted to record a contrary finding, there will be no finality to the proceedings and further it would result in conflicting decisions. In the circumstances, the Writ Petition succeeds. The impugned show cause notice dated 3rd December 1986 is quashed.

6. Accordingly, Writ Petition is allowed with no order as to costs.

