(1991) 09 CAL CK 0013

In the Calcutta High Court

Case No : Matter No. 4485 of 1991

Kanchanjangha Electronic Pvt. Ltd. APPELLANT

Vs

Collector of Customs RESPONDENT

Date of Decision : 26-09-1991

Acts Referred:
Customs Act, 1962 — Section 25

Citation : (1994) 71 ELT 37

Hon'ble Judges : Suhas Chandra Sen, J

Bench : Single Bench

Judgement

Suhas Chandra Sen, J.—The petitioner has relied on a Notification No. 84-ITC (PN)/90-93 issued by the Government of India, dated 9th November, 1990 under the heading ''Import and Export Policy for April, 1990 - March 1993''. In that Notification, it has been stated, inter alia, as follows :

*** *** *** "4. Actual users engaged in the manufacture of electronic items requiring OGL items for growth rates of more than 10 per cent or as per the production programme under the Phased Manufacturing Programme shall make an application for the same giving details of requirement of OGL items with justification. Units in the Small Scale Sector having Phased Manufacturing Programme shall apply to DC (SSI) while other to the concerned sponsoring authority. The concerned sponsoring authority/DC(SSI) shall work out the ceiling for import of OGL items and communicate to the concerned authority for issue of the OGL Import Entitlement Certificate. Customs will allow import within the ceiling as per the aforesaid Certificate during the licensing year and no list attestation will be necessary."

2. The petitioner''s case is that the petitioner is a unit in the small scale sector having "Phased Manufacturing Programme" and, therefore, the petitioner has to apply to the concerned sponsoring authority giving details of requirement of OGL item. According to the petitioner, this has been done. It appears that a letter was written to the Joint Chief Controller of Imports & Exports on 7th June, 1991, a

copy of which was also forwarded to the petitioner. This letter was written by the Addl. Director of Industries (EMPL), C & S.S.I., W.B. of the Office of the Directorate of Cottage & Small Scale Industries, Govt. of West Bengal, which is the sponsoring authority in this case. In that letter, it has been stated, inter alia, as follows :

"In view of Public Notification issued by Ministry of Commerce vide No. 84-ITC (PN)/90-93 dt. 9-11-1990 for obtaining OGL Import Entitlement Certificate in respect of M/s. Kanchanjangha Electronics Pvt. Ltd. case is hereby recommended for Import of raw materials as per statement enclosed for their industrial activities.

The Unit may be considered for OGL Import Entitlement Certificate complying other norms as applicable under Notification and if found otherwise eligible."

This letter was signed by the Additional Director of Industries (EMPL), C. & S.S.I., West Bengal. A copy of that letter was forwarded to the petitioner in the following manner:

"C.c. to: M/s. Kanchanjangha Electronics Pvt. Ltd., 3, Vidyasagar Sarani, Barabagan, Calcutta - 700 063 - You are requested to submit regularly quarterly production & utilisation statement of the referred materials to this office for record and future reference."

3- According to the petitioner, the sponsoring authority, so far as the petitioner is concerned is the Directorate of Cottage & Small Scale Industries, Government of West Bengal. On behalf of the Customs Authorities a strange stand has been taken that an application has to be made in proper form for obtaining release of the goods but this was not done. Nothing has been shown by the Customs Authorities from any of the Notifications about the requirement of making an application. The Sponsoring Authority was to communicate direct to the Jt. Chief Controller of Imports & Exports on the application made by the petitioner and the Customs Authorities are required to act on that.

4. Strong emphasis was placed on paragraph 3 of the Notification on behalf of the respondents which speaks of "Actual Users (Industrial) in the organised section engaged in the manufacture of automobiles, electronic items and consumer durables". According to paragraph 3 of the Notification, Actual Users (Industrial) are required to apply in the prescribed form, enclosing a certificate from a Chartered Accountant giving details of import under Open General Licence during the preceding licensing year duly supported by original Bills of Entry. The petitioner''s case is that the petitioner has not imported any such items previously.

5. The petitioner has in the instant case imported goods for manufacture of X-ray tubes. The only other manufacturer of such goods in India is Bharat Electronics Ltd. at Bangalore. There is no other manufacturer of this product which is required in medical institutions and also in industries.

6. The petitioner has stated that its firm was granted approval by the Ministry of Industries, Government of India in consultation with the Department of Electronics for the manufacture of the following product in the Small Scale Sector, namely re-activation and/or rejuvenation of high power electronic tubes. The approval was contained in Memo No. 31(97-K)/82-Elect. dated June 30,1982 issued by the then Dy. Director (Electronics), office of the Development Commissioner, Small Scale Industries, Ministry of Industry, Government of India. As a Small Scale Industry, the petitioner firm has been manufacturing electronic items by an under Memo No. 1717(5)/SSI/35 dated 7th Sep. 1982, issued by the Directorate of Cottage and Small Scale Industries, Govt. of West Bengal and the petitioner has been granted permanent registration certificate as Small Scale Industry by the Directorate of Cottage & Small Scale Industry for production and manufacture of the specified electronic goods. The Central Government in exercise of powers conferred by Section 25 of the Customs Act, 1962 exempted the goods specified in Col. 3 of the table and falling within the Chapter of the First Schedule to the Customs Tariff Act, 1975 specified in the corresponding entry in Col. 2 of the said Table when imported in India for the purpose of manufacturing of goods specified in the corresponding entry in Col. 4 of the said Table, from so much of that portion of the duty of Customs leviable therein which is specified in the said First Schedule as in excess of the rate calculated at the rate of 35% ad valorem.

Col. 1. Col. 2. Col. 3. Col. 4. SI. No. Chapter of the First Description of For the manufacture of goods. Schedule to the goods. Customs Tariff Act. II 32,70,85 or 98 (i) Small Glass Liquid Crystal display Semi- Frit of Glass conductor devices electronic Power valves and tubes, glass to (ii) Glass per metal scales, transistors, oms of pol- headers read relays or reed lects; switches, delay line resistors, (iii) Glass moulded piezoelectric crys- Tubes tals. Under the said Notifications issued by the Central Government, the above partial exemption from customs duty was made subject to the following conditions, viz. -

(i) An Officer not below the rank of a Joint Director in the Department of Electronics of the Government of India or of a State or an Additional Industrial Advisory in the Directorate General of Technical Developments of the Government of India as the case may be is satisfied that the goods in question have been acquired for the purpose specified above and recommends grant of the above exemption.

(ii) The importer shall by the execution of a bond in such form and for such sum as may be specified by the Assistant Collector of Customs bind himself to pay on demand in respect of such goods as has not provided to the satisfaction of the Assistant Collector of Customs to have been used for the aforesaid purposes, an amount equal to the difference between the duty leviable on such goods but for the exemption contained herein and that already paid at the time of importation.

7. In my view, there is considerable force in the contention of the petitioner. Reliance on paragraph 3 on behalf of the respondents which deals with the Actual

Users (Industrial) in the organised section is entirely misconceived. In fact, I pointedly asked the respondents to explain what is the meaning of the words "Actual Users (Industrial) and to explain the words ''Actual Users'', which has been mentioned in paragraph 4 but the respondents were entirely unable to make out any distinction. The specific case of the petitioner, as stated in paragraph 5 of the petition has already been set out. The petitioner has also annexed the Certificate issued by the Ministry of Industry, Government of India in support of his contention.

8. In view of the above, there is no scope for holding that the petitioner does not come within paragraph 4 of the Notification dated 10th November, 1990.

9. There will be orders in terms of prayers (a), (b) and (c) of the petition. The Actual User Certificate must be issued in favour of the petitioner by the Respondent No. 4 by 12 noon of Monday the 30th September, 1991 without fail. The Customs Authorities will issue a proper certificate so that no port charges are levied upon the petitioner because of the detention of the goods in the Port area unnecessarily.

10. It has been stated by the petitioner that due to inordinate delay in releasing the goods by the Customs Authorities, the goods are being damaged. Accordingly, the Customs Authorities will pay costs to the petitioner assessed at 100 GMs.

11. On behalf of the respondents a prayer has been made for stay of operation of this order. Since no question of law worth considering has been raised by the respondents, I do not propose to pass any order for stay of, operation of this order.

12. All parties shall act on a signed copy of the operative part of this order on the usual undertaking.