(1993) 10 MAD CK 0064

In the Madras High Court

Case No : Writ Petition No''s. 435 and 436 of 1985

Kodali Sathyanarayana APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 26-10-1993

Acts Referred:
Customs Act, 1962 — Section 12, 15, 25, 25(2)

Citation : (1994) 45 ECC 162 : (1994) 70 ELT 194

Hon'ble Judges : Srinivasan, J

Bench : Single Bench

Advocate : Shri E.S. Govindan, for the Appellant; Shri C.A. Sundaram, Addl. Central Govt. Standing Counsel, for the Respondent

Judgement

Srinivasan, J.—These Writ Petitions 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 23-1-1985 and made herein and the counter affidavits filed herein and the records relating to the order in F. No. 459/309/84-Cus. V dated 22-9-1984 on the file of the 1st respondent comprised in the return of the respective respondent to the Writ made by the High Court, and upon hearing the arguments of Mr. E. S. Govindan, Advocate for the petitioner in both the petitions and of Mr. C. A. Sundaram, Additional Central Government Standing Counsel on behalf of the respondents in both the petitions, the Court made the following order :-

The petitioner is a physically handicapped person. He got incapacitated at the age of 23. At the time of filing the writ petition, he was aged 33. He is working in M/s. Bhanu Construction Co. (P) Ltd., Hyderabad as Chief Accountant. In order to attend to the day-to-day requirements of Banking, etc., connected with his financial duties, he needed a car with special amenities adapted for his use. He obtained a medical certificate from the Specially Constituted Medical Board on 4-9-1983 as per the policy of the Central Government which provided for permission to import cars specially made for handicapped persons on payment of

50% ad valorem duty as against 185% ad valorem duty. On 6-10-1983, the Medical Board constituted by the Collector of Customs, Madras in terms of Notification dated 25-5-1983, issued a certificate to the petitioner. After receiving the medical certificate, the petitioner opened a Letter of Credit through Andhra Bank, Balanagar, Hyderabad - 17 for Yens 10,05,000/- dated 15-11-1983 favouring M/s. Nippon Trading Co. Ltd. 2-1-Uchi Kanda, z-Chrome, Chyyoda-KW, Tokyo-101. The Letter of Credit was valid for shipment upto 30-4-1984 and negotiable upto 15-5-1984. He placed an order with M/s. Nippon Trading Co., Ltd., Japan on 15-11-1983 through their sole authorised agent in India viz., M/s. Pearey Lal & Sons Pvt. Ltd. New Delhi for supply of a car below 1000 c.c. fitted with steering Grip and Left or Right Switch on winking lights, with disability control device, as per Notification No. 152/83 dated 25-5-1983.

2. The car was shipped on 31-3-1984 from Yokohama Port, Japan Vide B.L. No. YHEM-38 on board the Steamer s.s. Ohtori to Bombay. The ship unloaded the cargo at Port Kelan, Malaysia enroute to India due to the information they received regarding All India Port Workers strike. From Port Kelan the car was sent to Nagoya (not the original port of loading) Japan from where it was re-shipped to Madras, on board s.s. VISHVA ANURAG on 9-7-1984 vide B.L. No. 2 and arrived on 5-8-1984. The delay in transport was due to cyclone on enroute.

3. The petitioner filed a Bill of Entry for Home consumption on 31-7-1984 i.e., the last day of validity of Notification No. 160/84. The Customs Department made an endorsement on the Bill of Entry on 13-8-1984 stating that the Notification bearing No. 160/84 had expired on 31-7-1984 and the petitioner was not entitled to concessional rate of duty as per the Notification. It was also stated that an Import Licence was necessary in view of the non-applicability of the concessional rate of duty. The Bill of entry was subsequently cancelled and Yellow Bill of Entry was filed on 24-8-1984 and the car was kept in the Bonded Godown.

4. The petitioner made a representation on 14-8-1984 raising a plea that though the Notification had lapsed on 31-7-1984, the car was shipped within the time specified, that is, prior to 30th April, 1984 and the delay in transport was not due to any fault of his. It was pleaded by him that the Notification was applicable to him though it expired on 31-7-1984. It was also prayed for by him that the authority should exercise its power u/s 25(2) of the Customs Act and grant an ad hoc exemption as a special case in his matter. The said representation of the petitioner was rejected by a communication in F. No. 459/309/84-Cus. V dated 22-8-1984. The petitioner was informed that the Notification had lapsed already on 31-7-1984 and the car has arrived after that date with the result, the Notification was not applicable. It was also stated that as a matter of policy exemption on specially designed car for physically handicapped persons is not being granted presently. Ultimately, the authorities expressed their inability to accede to the request of the petitioner for exemption. The petitioner made further representations and one such representation was to the Ministry of Finance, Government of India on 12-9-1984. He reiterated the prayer for ad hoc

exemption for the car from payment of duty. That was rejected by a communication in F. No. 459/309/84-Cus-V dated 13th December, 1984. Once again the reason given is that the Notification having expired already, the request for ad hoc exemption could not be granted. Thereafter, the petitioner filed these two writ petitions on 22-1-1985. In W.P. No. 435 of 1985, the prayer is for issue of mandamus directing the Assistant Collector of Customs (Group III), Madras to release the car lying in the bonded godown at Madras on payment of 50% duty as per Notification No. 160/84 dated 22-5-1984 and pass further orders. In the other writ petition viz., W.P. No. 436 of 1985, the prayer is for issue of certiorarified mandamus calling for the records before the first respondent dated 22-8-1984 and quashing the same and also directing the respondents to consider the application of the petitioner and issue and ad hoc exemption u/s 25 of Customs Act and pass such further orders.

5. Pending disposal of the writ petitions, the petitioner applied for interim order and it is now stated that by an order of this Court in W.M.P. No. 709 of 1985 in W.P. No. 435 of 1985, the vehicle was directed to be released on payment of 50% duty as per the Notification No. 160/84 dated 22-5-1984 and on furnishing bank guarantee to the satisfaction of the third respondent for a sum of rupees approximately representing 25% of the disputed customs duty. Thus the petitioner has got the release of the car during the pendency of the writ petitions on such conditions.

6. The contentions of the petitioner in both the writ petitions are the same. In short, he contends that the Notification dated 22-5-1984 will be available to him even though the notification had ceased to be in force from 31-7-1984. It is argued that the conditions set out in the Notification are all fulfilled by the petitioner and there is no condition in the notification that the motor car shall enter the port of import before a particular date. It is submitted that the petitioner having fulfilled all the conditions and having started the process of importing and the car having been shipped before 30-4-1984. For delivery at a Port intended, the notification will be operative with respect to the said car.

7. Secondly, it is contended that the respondents have not considered the request of the petitioner for grant of ad hoc exemption u/s 25(2) of the Act and they should be directed to consider the application and pass appropriate orders.

8. As against these contentions, learned counsel for the respondents contends that once the notification expires, the duty is payable under the provision of Sections 12 and 15 of the Act and as on the date of entry of the goods into the Port, the duty that was payable was 185% ad valorem duty. It is submitted that the notification cannot have any operation beyond 31-7-1984 and in this case, the ship having entered the Port on 5-8-1984, the petitioner will not be entitled to the benefit of the notification. Secondly, it is argued that the order impugned has taken note of the provisions of Section 25(2) of the Act and rejected the request of the petitioner only after consideration of the relevant circumstances and there is no warrant for a direction to the respondents to consider the

application of the petitioner.

9. In the view I am taking in this matter, I do not propose to consider the first contention of the petitioner. I leave open the said question.

10. The second contention that the respondents have not considered the request of the petitioner for grant of ad hoc exemption u/s 25(2) of the Act is well founded. Section 25(2) of the Act reads as follows :-

"If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by special order in each case, exempt from the payment of duty, under circumstances of an exceptional nature to be stated in such order, any goods on which duty is leviable."

In the present case, the petitioner''s representation dated 14-8-1984 has been rejected on 22-8-1984 by the following order :-

"I am directed to refer to your letter No. Nil. dated 14th August, 1984, addressed to the Deputy Secretary, Department of Revenue on the above mentioned subject and to say that Notification No. 160/84-Cus., dated 22-5-1984 has already lapsed on 31-7-1984. In your case the car has arrived after this date and therefore the Notification would not be applicable. Further, as a matter of policy exemption on specially designed car for physically handicapped person is not being granted presently.

As the car has arrived and a bill of entry has been filed, the Central Government is not now empowered to grant exemption with retrospective effect. Accordingly, I am directed to inform you that it is regretted that it would not be possible to accede to your request for exemption from Customs Duty on import of the specially designed car."

The further representation made by the petitioner to the Finance Minister has been rejected by order dated 13th December, 1984 in the following words :-

"I am directed to refer to your letter dated 12-9-1984 addressed to the Finance Minister on the above mentioned subject and to say that as already informed vide this Department''s letter of even No. dated the 22nd August, 1984 your request for Ad-hoc exemption cannot be acceded to. As regards your request for recommending your case to the Chief Controller of Import & Exports for grant of import licence I am directed to inform you that a reference to C.C.I. & E. has been made. You may contact the office of the C.C.I. & E. for further necessary action in the matter."

11. A perusal of the two orders shows that neither order has considered the request of the petitioner in the light of Section 25(2) of the Act. It is argued by learned counsel for the respondents that there can be no question of public interest in granting ad hoc exemption in favour of the petitioner who is an individual and, therefore, Section 25(2) of the Act cannot be invoked by him. But neither of the orders as pointed out already has given its reasons for rejecting

his request u/s 25(2) of the Act. The only reason given in the two orders is that the Notification No. 160/84 dated 22-5-1984 has already lapsed on 31-7-1984 and the benefit of the notification was no longer available to the petitioner. Reliance is placed by learned counsel for the respondents on the last sentence in the first part of the order dated 22-8-1984. It is submitted by him that the respondent has given a reason that as a matter of policy exemption is not granted to handicapped persons not the relevant dates. The sentence does not in any way show that the circumstances set out in Section 25(2) of the Act are considered by the concerned authority. That sentence if read with the earlier sentence in the order will only show that as a corollary to the lapse of Notification on 31-7-1984, the authority is of the view that the petitioner will not be entitled to any exemption as the policy had changed after 31-7-1984. Even if the policy has changed in general it is applicable to all the general public but it is open to the Government u/s 25(2) of the Act to consider whether in a particular case, the exemption should be granted. For that purpose, the Government should consider whether there are exceptional circumstances and whether public interest will be satisfied by granting an order of exemption in favour of the appellant. In the present case, such consideration has not been made by the authorities in either of the orders.

12. It is clear therefore that both the orders are vitiated by errors apparent on the face of the record in so far as they failed to consider the request of the petitioner for grant of ad hoc exemption. Hence, the orders are quashed and the respondents are directed to consider the petitioner''s request u/s 25(2) of the Act for grant of ad hoc exemption and pass appropriate orders. Liberty is given to the petitioner to make additional representation to the concerned authorities setting out such circumstances on which he may place reliance for the purpose of consideration by the authorities u/s 25(2) of the Act. The petitioner is directed to send such additional representation if any, within eight weeks from this date. The first respondent shall consider the representations of the petitioner and pass appropriate orders within eight weeks from the date of receipt of such representation. The first respondent shall give a personal hearing to the petitioner. The bank guarantee furnished by the petitioner pursuant to the interim order of this Court in W.M.P. No. 709 of 1985 shall continue to be in force till final orders are passed by the first respondent on the representation of the petitioner. The writ petitions are allowed on the above terms. No costs.