(1991) 11 GUJ CK 0004

In the Gujarat High Court

Case No : Special Civil Application No. 3127 of 1981

Laxmi Steel Company APPELLANT

Vs

Collector of Customs RESPONDENT

Date of Decision : 19-11-1991

Acts Referred:
Customs Act, 1962 — Section 21

Citation : (1992) 62 ELT 690

Hon'ble Judges : J.M. Panchal, J;A.P. Ravani, J

Bench : Division Bench

Advocate : P.M. Dave, for S.H. Sanjanwala, for the Appellant; H.M. Bhagat, for the Respondent

Judgement

A.P. Ravani, J.—The petitioner is a partnership firm. An Egyptian vessel named ''Al Madina'' was involved in a sea-storm some time in June 1976 and it was found at the sea-board of village Vasi-Bordi, Taluka Navsari, District Bulsar. Respondent No. 1 as receiver of the vessel issued a proclamation for auction of the ship on May 2, 1980, intimating the public for public auction of "wrecked vessel Al Madina Egiptian vessel". The terms and conditions of the auction have been produced at Annexure - A to the petition. Clause 12 of the terms and conditions provides that the highest bidder shall have to pay the customs duty chargeable under the existing law of the Central Government and other taxes if any liable to be paid to the Government over and above the bid value. There were 53 bidders at the time of auction which was held on May 20, 1980. The petitioner quoted Rs. 13,00,000/- (thirteen lakhs) and it was the highest bid. Respondent No. 1 as per order dated June 19, 1980 produced at Annexure C to the petition confirmed the auction sale of vessel called Al-Madina, Egyptian vessel.

2. It appears that by letter dated August 30, 1980 (copy of the same is not produced on record) written by the petitioner, a dispute was sought to be raised as regards the payment of customs duty and M.S.T.C. charges. In response to

this letter, respondent No. 1 informed the petitioner by letter dated September 13, 1980 that the customs duty and M.S.T.C. charges were to be paid by the petitioner and in that connection necessary clarification was made at the time of auction. Even the petitioner had given in writing on June 17, 1980 to the effect that as per the conditions of the contract the petitioner was ready to pay the customs duty and other taxes of the Government and also the service charges. Despite this position, the petitioner requested for exemption from the payment of customs duty. However, the request was made to the Minister of Ports and Transport, Government of Gujarat. It appears that the said letter was forwarded to the Government of India, Ministry of Finance, Department of Revenue. The Government of India by letter dated September 22, 1980 informed the petitioner that the case was examined carefully and the request for exemption from payment of customs duty cannot be acceded to. The petitioner paid the import duty of Rs. 5,20,000/- at the rate of 40% and countervailing duty of Rs. 1,04,000/- at the rate of 8% and auxiliary duty of Rs. 65,000/- at the rate of 5% on January 1, 1981 as approved by the Additional Collector. Thereafter the petitioner has filed this petition praying that the respondents be directed to refund the amount of customs duty recovered from it on the price of vessel Al-Madina.

3. On behalf of the Respondents it is contended that the petitioner entered into a contract with Respondent No. 1. As per the terms of the contract, the petitioner is liable to pay customs duty. As disclosed in the letter dated September 13, 1980, the question with regard to the liability to pay customs duty was clarified at the time of auction over and above the fact that it has been specifically mentioned in Clause No. 12 of the terms and conditions of auction. Even the petitioner did not claim that the goods were not liable to import duty. But the petitioner claimed exemption on various grounds. The request for exemption has been turned down by the Government of India. In view of this position it is submitted that as the petitioner has entered into a contract and has led the respondents to sell the goods subject to the terms and conditions agreed upon by the parties, the petition for refund should not be entertained. In support of this contention, the learned counsel for the respondents has relied upon a decision of a Division Bench of the Bombay High Court in Khanbhai Essofbhai v. U.O.I. reported in 1989 (41) E.L.T. 239 (Bom.). In that case a vessel which was capsized and sank in the Bombay harbour was ultimately auctioned as the owner of the vessel did not come forward to take any action. The highest bidder disputed the liability to pay customs duty and challenged the legality and validity of the levy of the customs duty by filing a petition in the Bombay High Court. The Bombay High Court inter alia held that the writ petition ought to fail on the ground that the discretionary relief under Article 226 of the Constitution ought not to be granted to the petitioners. The Bombay High Court upheld the contention raised by the respondents that the transaction in question relating to purchase of the salvaged vessel was in the realm of contract and that it would be a fit case in which the court may legitimately decline to extend its discretion in

favour of the party who in effect tried to obtain an unfair advantage and also to commit breach of the conditions under which it had submitted the tender.

4. We are in agreement with the observations made by the Bombay High Court. In the instant case also, the petitioner has entered into a contract with Respondent No. 1. At the auction the terms and conditions of sale were clarified. As per the letter dated September 13, 1980 written by Respondent No. 1, it is clear that the clarification as regards the liability to pay customs duty was made at the time of auction. Even the petitioner gave in writing on June 17, 1980 and undertook to pay the customs duty and M.S.T.C. charges. Be it noted that the customs duty payable was in fact paid. In this view of the matter, now after purchasing the vessel on certain terms and conditions, it is not open to the petitioner to contend that he is not liable to pay the customs duty. As observed by the Bombay High Court, in this case also if the discretionary relief is granted to the petitioner, it would amount to giving an unfair advantage to the petitioner. All other bidders made their bid relying on the clarification made by Respondent No. 1 that the customs duty and other taxes were to be payable by the highest bidder. Even though there was no ambiguity, the petitioner tried to create confusion and sought clarification. It was made clear that the petitioner was liable to pay the customs duty. In this situation, if the discretionary jurisdiction of Article 226 of the Constitution of India is exercised in favour of the petitioner it would amount to granting unfair advantage to the petitioner. Therefore, on this ground also the petition is liable to be rejected.

5. However, since the petition has been admitted and the same remained pending for a pretty long time, we would deal with the submission made by; the learned counsel for the petitioner even on merits. The petition is based solely on the ground that in the facts of the case the ship cannot be said to have been imported. On account of the sea-storm is drifted to Indian water and has landed at sea-board of village Vasi-Bordi. Therefore, it is contended that there is no import and hence there cannot be any import duty. However in view of the provisions of Section 21 of the Customs Act, 1962 which inter alia provides that all goods derelict, jetsam, flotsam and wreck brought or coming into India shall be dealt with as if they were imported into India, the learned counsel for the petitioner has not pressed this point and has fairly conceded that it cannot be said that there is no import of vessel into India. In view of this concession, this contention is not required to be considered in detail.

6. The learned counsel for the petitioner has submitted that no customs duty is chargeable on the vessel. It was also submitted that duty if at all could be levied would be under Heading No. 89.04 of Customs Tariff Act, 1975 and that there is no other heading in which the articles sold to the petitioner would fall. Item No. 89.04 reads as follows :-

"89.04 : Ships, boats and other vessels for breaking up : 40%"

It was also contended that in similar cases in past no duty was charged and if the duty is levied the petitioner would be treated with hostile discrimination.

7. When we proceeded to consider the aforesaid submissions on merits, the learned counsel for the petitioner submitted that since the court has found that it would not be proper to entertain the petition under Article 226 of the Constitution as indicated hereinabove, the petitioner does not press all other contentions. In view of this position all the aforesaid contentions are rejected as having not been pressed and therefore they are not required to be dealt with in details.

8. In the result, the petition is rejected. Rule discharged.

