(1996) 11 OHC CK 0008

In the Orissa High Court

Case No : Original Jurisdiction Case No. 6734 of 1992

Magnetix (India) Ltd. APPELLANT

Vs

Supdt. of C. Ex. and Cus. RESPONDENT

Date of Decision : 12-11-1996

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2003) 159 ELT 73

Hon'ble Judges : P.C. Naik, J;Mohanty, J

Bench : Division Bench

Advocate : M.C. Jena, P.R. Mishra and R.K. Jena, for the Appellant; A.B. Mishra, CGSC, for the Respondent

Judgement

P.C. Naik, J.—The petitioner is a public limited company registered under the Indian Companies Act 1956. During the course of its business, it imported from West Germany 10 metric tons of Barium Carbonate and 3 metric ton of Strontium Carbonate, which are essential raw materials required for the manufacture of Hard Ferrites - a product the Company manufactures. The goods arrived at Calcutta Air Port on 27-12-90 and were stored in the Bonded Ware House at Calcutta on 16-1-91. Thereafter, on the basis of the application filed by the petitioner, the goods were transferred to the Central Warehousing Corporation Bonded Ware House at Bhubaneswar on 20-2-91. Subsequent to the import, the petitioner, on 3-6-91 applied to the appropriate authority for grant of Customs Duty Exemption Entitlement Certificate (D.E.E.C), which was granted on 31-3-92. After obtaining this certificate, the petitioner moved opposite party No. 1 for clearing the bonded goods from Customs Ware House, Bhubaneswar without payment of Customs duty in terms of the Notification No. 159/90-Cus., dated 30-3-90. On 6-8-92, the petitioner was informed that he was eligible to clear up the customs goods for manufacture and clearance for export goods only in terms of the said Notification. He was further informed that though he was eligible to get exemption from payment of Customs Duty, he was not eligible to avail exemption of payment of interest already accrued on the goods at the rate of 18% per annum up to 22-12-91 and at the rate of 20% per annum from 23-12-91. A copy of this letter dated 6-8-92 is Annexure 4 to the petition. It appears that after receiving Annexure 4, the petitioner took up the matter for determination of interest with the Collector of Central Excise and Customs, Bhubaneswar who vide letter dated 16th September, 1992 (Annexure 6) re-itereated that though the petitioner was entitled to duty free clearance from the Warehouse in terms of the exemption notification, he was liable to pay interest on the duty in terms of Sub-section (2) of Section 61 of the Customs Act. Aggrieved with the aforementioned orders (Annexures 4 and 6), the petitioner approached this Court for quashing the said Annexures, inter alia, on the ground that as the goods have been exempted from duty interest in terms of Sub-section (2) of Section 61 could not be claimed.

2. The petition is opposed by the opposite party on the grounds, inter alia, that as the goods on the date of import and on the date on which this was stored in the warehouse were dutiable goods, the Department was justified in claiming interest for a period during which the goods were stored in the customs warehouse. It is also submitted that the exemption under the Notification is not automatic, but subject to certain conditions, which are required to be fulfilled by the petitioner before a claim for exemption can be made. Attention of the Court is invited to the various provisions contained in the notification, in particular, Explanation (vi) (a) to Clause 1, which reads thus:

"Explanation:- In this notification:

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(v) "Imported into India against an Advance licence" includes:

(a) Goods imported under any licence (including Open General Licence) issued under the Imports and Exports (Control) Act, 1947 (18 of 1947), for the time being in force, for which at the time of clearance out of Custom''s Control a valid Advance Licence is produced by the importer,"

Reliance is placed in the words goods imported under any licence for emphasing that as the import was not under licence the petitioner was liable to pay the interest.

3. It is the further submission that the scheme is applicable only to those export products, which provides a minimum value addition of 33% or such higher value addition as specified in Appendix 13-D of the Policy. It was also submitted that this Court ought not to interfere in exercise of its jurisdiction as the petitioner has statutory right of appeal u/s 128 of the Customs. Act,. 1962.

4. We have heard learned Counsel for the parties at length on more than one occasion but at this stage, the counsel for the parties do not dispute the position that it would be appropriate that the matter is considered by the statutory authorities under the Act as any determination at this stage will prejudice either parties and it will preclude it from exercising his statutory remedy under the

Customs Act. Another reason, for which we feel that we should not interfere at this stage is, that even according to the opposite parties what has been served on the petitioner is a demand-cum-show cause notice and the final adjudication of the same is awaited. Admittedly, the petition has been filed after issuance of the demand-cum-sale notice on an apprehension that the amount mentioned in the notice was the amount which is liable to be paid.

5. We therefore feel that the proper course for the petitioner would be to file a reply to the demand-cum-show cause notice and that the question as to whether or not it is liable to pay interest can be determined by the appropriate authority. All points raised by the petitioner before this Court can effectively be raised with respect to the show cause notice and on being raised, we are sure that the appropriate authority will consider the contentions and pass an appropriate speaking order expeditiously, preferably within a period of three months from the date of submission of the reply to the show cause notice. As the matter is to be adjudicated upon, the question of immediate realisation of any interest, cannot raise. However, the bond submitted shall remain in force till then.

With the direction aforesaid, the petition is disposed of. Requisites for communication of this order shall be filed within a week.