(2001) 07 AHC CK 0012

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 810 of 1999

Motilal and Brothers — APPELLANT

Vs

Customs, Excise and Gold (Control) Appellate Tribunal and Others — RESPONDENT

Date of Decision : 13-07-2001

Acts Referred:
Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 28A

Citation : (2001) 77 ECC 629

Hon'ble Judges : S.K. Sen, C.J;R.K. Agarwal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S.K. Sen, C.J.—Heard Shri A.P. Mathur learned Counsel for the petitioner and Shri S.P. Kesarwani learned Standing Counsel for respondents.

2. In the instant writ petition the petitioner has prayed for the following reliefs:

(i) issue a writ of certiorari quashing the order dated 27.7.99 served on 6.8.99 read with order dated Nil March 1997 passed on the modification application of stay and stay cum waiver application by the Hon''ble Customs, Excise & Gold (Control) Appellate Tribunal,

(ii) issue any other writ, order or direction in the nature of mandamus directing the Hon''ble Tribunal Mumbai to decide the Appeal No. C/2/R/97 Bom filed by the petitioners without insisting on any pre-deposit within a stipulated period and further to say [stay] the recovery proceedings till the disposal of the Appeal.

(iii) issue any other writ, order or direction which this Hon''ble Court may deem fit and proper in the circumstances of the case.

(iv) and to award the cost of this petition to the petitioners.

3. It appears from the relief claimed in the writ petition that the petitioner seeks

to challenge the order passed on the application for modification of stay and stay cum waiver application by the Customs, Excise & Gold (Control) Appellate Tribunal, Mumbai. A further prayer has been made by the writ petitioner for a direction upon the Tribunal which is situated at Mumbai to decide the Appeal No. 642-1997 filed by the petitioner without insisting on any pre-deposit within a stipulated period and further to stay recovery proceedings till the disposal of the appeal.

4. The short facts involved in the writ petition inter-alia are that the petitioner is engaged in the manufacture of carpet at Ghosia, District Sant Ravi Das Nagar (Bhadohi) and is possessed with an import-export pass book duty free licence under which the petitioner was importing duty free dyes and chemicals for using them in the manufacture of carpets which were to be exported outside India. It is stated that some consignments of dyes and chemicals pending clearance at Bombay docks were seized. After investigation being made, about the actual use of the imported goods by the petitioner, a show cause notice was issued on 28th August 1991 by the Assistant Collector of Customs (Preventive) Mumbai. On 11.5.1992 the case was adjudicated by the Additional Collector of Customs (Preventive) Mumbai. The Collector of Customs (Appeals) vide order dated 11.10.1993 set aside the order of Additional Collector on the ground of the jurisdiction of the authority in issuing the show cause noticee. Therefore on 3rd June 1994, the Collector of Customs (Preventive) Mumbai issued a fresh show cause notice. On 11th September 1996 Commissioner of Customs (Preventive) Mumbai adjudicated the case and decided the same against the writ petitioner. In December 1996 writ petitioner filed appeal and stay-cum-waiver application before the Customs Excise & Gold (Control) Appellate Tribunal at Mumbai. On 19th March 1997, the Tribunal had partly allowed the stay-cum-waiver application and observed as follows.

On a careful consideration of the submissions, we find that the issues are contentious and in such circumstances we are of the view that for the purpose of hearing the appeal on merits in this case the applicant should pre-deposit rupees 40 lakhs on or before 30.4.1997 subject to which the pre-deposit of the balance amount of duty and penalty will be dispensed with and its recovery stayed.

On 15th May 1997 application for modification of the aforesaid order was filed by the writ petitioner on which following order was passed by the Tribunal on 18th November 1997:

On careful consideration of submissions, since this is very central to the modification application of the stay order we would direct the Department to verify the actual position since it will have a clear nexus to the very basis of demanding duty u/s 28A of the Customs Act in this case on the material in question. Copy of this order to be given to both the parties.

5. It appears that thereafter the Department filed an application before the Tribunal for hearing the appeal out of turn on which on 29th June 1999 an order

was passed by the Tribunal to the following effect:

Failure on the part of the importer to comply with the stay order of the Tribunal will itself result in dismissal of the appeal of the imported and therefore no ground for early hearing and the application for early hearing by the department is therefore dismissed.

6. Subsequently the modification application filed by the petitioner on 15th May 1997 came up for consideration before the Tribunal and vide order passed on 27th July 1999 the Tribunal held that they do not see any reason to modify the earlier order and further observed that if the amount is not deposited within a month from the receipt of the order the appeal is liable to be dismissed."

7. The writ petitioner has challenged the order dated 27.7.98 read with the order dated 19.3.97 passed by Customs Excise & Gold (Control) Appellate Tribunal Mumbai in the present writ petition.

8. Mr. S.P. Kesarwani learned Standing Counsel appearing for the respondents has raised a preliminary objection about the maintainability of this writ petition on the ground that the orders impugned in the writ petition have all been passed by the Tribunal situate at Mumbai and no cause of action has arisen within the territorial jurisdiction of this Court so as to entertain the writ petition and exercise jurisdiction under Article 226 of the Constitution of India. According to him the adjudication proceedings took place before the authorities at Mumbai. Appeal was also considered at Mumbai, modification application was also considered at Mumbai. Therefore this Court cannot pass any order interfering with the order of the Tribunal located at Mumbai.

9. He further submitted that at no stage of the proceedings either before the adjudicating authority or before the Tribunal any objection regarding jurisdiction the said authority on the ground of lack of territorial jurisdiction was ever raised by the petitioner and only it was urged on behalf of the petitioner before the Tribunal that the Commissioner of Customs Mumbai alone is the competent authority to adjudicate the proceedings. That apart in the ground of appeal before the Tribunal the petitioners specifically took the point with regard to the jurisdiction to the effect that the adjudication proceeding should have been conducted by the Commissioner of Customs Mumbai and not by the Commissioner of Customs (Preventive) Mumbai. It therefore appears that the case of the petitioners all along was that the Commissioner of Customs at Mumbai has exclusive jurisdiction to adjudicate upon the matter.

10. In the writ petition except stating that the petitioner is engaged in the manufacture of carpets at Ghosia, District Sant Ravi Das Nagar (Bhadohi) and some verification was to be done in the factory of the petitioner by way of passing reference. The petitioner has not shown that any cause of action for challenging the impugned order of the Tribunal at Mumbai has arisen within the jurisdiction of this Court. The reliefs claimed by the writ petitioner has already been reproduced hereinbefore. All the reliefs have been claimed against the

action orders passed by the Tribunal at Mumbai.

11. Be that as it may the matter being proceeded with by Customs, Excise & Gold (Control) Appellate Tribunal Mumbai which had passed the impugned order as already stated hereinbefore there is no scope for challenging the orders of the Tribunal at Mumbai before this Court as no cause of action has arisen within the jurisdiction of this Court.

12. The decision of Hon''ble Supreme Court in the case of Navinchandra N. Majithia Vs. State of Maharashtra and Others, relied upon by the learned Counsel for the petitioners would not be applicable to the facts of the present case in as much as it related to a case entire transaction took place at Mumbai but the First Information Report was lodged at Shillong. The writ petition was filed at Mumbai High Court praying for mandamus to be issued to Meghalaya Government to transfer the investigation to Mumbai Police. No such situation exists in the present case. As already mentioned hereinbefore the impugned orders have been passed by the Tribunal at Mumbai and there is no averment in the writ petition on the basis of which it can be held that any cause of action had arisen within the jurisdiction of this Court.

13. We accordingly hold that this Court has no jurisdiction to entertain the writ petition The Mumbai High Court has the exclusive jurisdiction for the purpose. The writ petition therefore is dismissed. The interim order passed by this Court stands vacated.