(2013) 11 KAR CK 0090

In the Karnataka High Court

Case No : Writ Petition No. 51754 of 2013

M/s. Hindustan Aeronautics Limited — APPELLANT

Vs

Assistant Commissioner of Customs and Commissioner of Customs — RESPONDENT

Date of Decision : 26-11-2013

Acts Referred:
Customs Act, 1962 — Section 111(m)

Citation : (2014) 25 GSTR 18

Hon'ble Judges : Rathnakala, J;N. Kumar, J

Bench : Division Bench

Advocate : Shivadass, for the Appellant; P.S. Dinesh Kumar, Senior Standing Counsel, for the Respondent

Judgement

N. Kumar, J.—The Petitioner - M/s. Hindustan Aeronautics Limited, Engine Division, is engaged in the activities of importing forgings and castings and using the same in the activity of manufacturing engines for aircrafts and other components classifiable under Chapter 84 of the Central Excise Tariff Act, 1985. They import various parts of the above engines from foreign suppliers viz. M/s. Rolls Royce, UK, M/s. BAE Systems, UK, M/s. Honeywell, M/s. Turbomeca, France etc. who are the leading manufacturers of engines and aircraft parts in the world. The Petitioner has been claiming exemption from payment of customs duties in terms of Notification No. 39/96-Customs, dated 23.07.1996, for several parts of engines required for manufacturing aircraft/helicopter engines, upon fulfilling various conditions stipulated therein.

2. The Revenue entertained a view that the exemption under Notification No. 39/96 dated 23.07.1996 claimed by the petitioner does not cover the items such as castings, forgings, jet pipes, CDs etc. as on the imported items, certain activities were undertaken after import. The Revenue initiated investigation. They sought for clarification which were given by the petitioner. The respondents were of the view that the petitioner is not entitled to claim exemption under serial No.

27 of the said notification. Thereafter, the petitioner started importing goods from March 2013, by claiming exemption under serial No. 7 of the said notification, after carrying out necessary formalities. A show cause notice dated 05.06.2013 was issued by the respondents proposing the payment of customs duty of Rs. 60,60,27,590/- along with interest in respect of the goods valued at Rs. 2,10,23,87,785/- imported during the period from January, 2009 to February, 2013. Consequent to denial of exemption under serial No. 27 of the notification, they also proposed to confiscate the goods u/s 111(m) of the Customs Act and to impose penalty under the Act. A reply dated 02.08.2013, was submitted by the petitioner to the show cause notice. Thereafter, the first respondent has passed order-in-original dated 20.09.2013/10.10.2013, confirming the proposals made in the show cause notice. Aggrieved by the said order the petitioner filed an appeal along with the stay) application on 29.10.2013 before the Hon''ble CESTAT, Bangalore. The Registrar of the CESTAT issued an endorsement stating that the cases which are listed on 18.11.2013 stands adjourned to 29.11.2013. In those circumstances, the petitioner also filed a representation to the Chief Commissioner of Customs, Bangalore, seeking restoration of the green channel facility, as there was a threat of encashing the bank guarantee, which was famished. The petitioner has preferred this writ petition seeking stay of the order of the respondent till the Tribunal disposes of the appeal and allows assessment in respect of the imported goods which are pending for customs clearance by extending the exemption under serial No. 7 of the notification and continue the accreditation under the Accredited Client Programme, till the date of its validity. After filing the writ petition, the respondents have sent a reply to the representation of the petitioner dated 20.11.2013 which reads as under:--

The matter has been examined. It is seen that the Commissioner of Customs, Bangalore has passed an appealable order on the applicability of the exemption notification claimed by you. It is also seen that you are in the process of filing an appeal before the Hon''ble CESTAT. As on date, the order of the Commissioner of Customs, Bangalore has neither been stayed nor set aside. Therefore, your request to extend benefit of the Notification and green channel facility has not been acceded to.

Alternatively, it is suggested that the goods may be cleared on provisional assessment basis by executing appropriate Bond, or on payment of merit rate of duty.

3. Heard the learned Counsel for the parties.

4. Petitioner is a public sector undertaking which is in the field of manufacturing aircraft and helicopters which are required for the defence of the country. Admittedly, they had the benefit of green channel facility for more than a decade by which all the imported goods were taken out from the customs barriers without any objections, to the place of manufacture. Now a dispute has arisen regarding some items which are imported as to whether they would fall under the exemption or not.

5. It is submitted on behalf of the petitioner that the green channel facility has not been withdrawn in writing. Now the action of the respondents is under challenge before the CESTAT. Unfortunately, the appeal and stay application is not taken up for want of quorum. In the reply given by the respondents, authorities have made it clear that they would not extend the benefit of notification and green channel facility to the petitioner. However, they have suggested that the goods may be cleared on provisional assessment basis by executing appropriate bond or on '' payment of import rate of duty. Learned Counsel for the petitioner submits that till the disposal of the appeal on merits, they are prepared to have a provisional assessment and they will execute a appropriate bond for the duty payable, so that the goods could be cleared and the manufacturing activity is in no way affected. In the light of what is stated above and the reply given by the authorities, we deem it appropriate to permit the clearance of the goods on provisional assessment basis by executing appropriate bond. It is submitted that executing a bank guarantee is exempted in respect of public sector undertaking, more so, in the nature of defence undertaking. Under these circumstances, we pass the following order:--

ORDER

a. The writ petition is partly allowed.

b. The respondents are directed to clear the goods on provisional assessment basis on petitioner executing a appropriate bond in respect of the duty levied.

c. No bank guarantee shall be insisted upon.

d. This arrangement will be in force till the disposal of the appeal before the CESTAT on merits or till the application for stay in that appeal is heard, the respondents shall not precipitate the matter.

Sri Dinesh Kumar, learned Senior Standing Counsel is permitted to file memo of appearance within four weeks.