
(2000) 09 DEL CK 0139
In the Delhi High Court
Case No : C.W. 7472 of 1999

M/s. Sony India Limited

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 01-09-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 94 ECR 217 : (2002) 144 ELT 294

Hon'ble Judges : D.K. Jain, J;Arun Kumar, J

Bench : Division Bench

Advocate : Mr. V. Lakshmikumaran, for the Appellant; Mr. M. Chandrasekharan Mr. Neeraj Kaul, Mr. Kamaljeet Singh, Ms. Tamali Wad and Ms. Deepali Dwivedi, for the Respondent

Judgement

Arun Kumar, J.—This petition is directed against an order of the Customs Excise and Gold (Appellate) Tribunal, New Delhi (hereinafter referred to as the CEGAT) dated 17th September, 1999 whereby the petitioner was directed to deposit an amount of Rs. 20 crores towards duty within eight weeks from the date of receipt of the said order as a condition precedent for hearing the appeal filed by the petitioner before the CEGAT against the order dated 30th January, 1999 passed by the Commissioner of Customs, ICD, New Delhi imposing a duty in the sum of Rs. 42,89,75,196/- and a penalty of Rs. 30,19,92,183/- on the petitioner.

2. Briefly, the facts are that the petitioners are engaged in the manufacture of colour television (CTV) sets under the "SONY" brand name in their factory at Dharuhera in the State of Haryana. According to the petitioners, at the relevant time they imported various components for the manufacture of colour TVs. On arrival of the respective consignments, the petitioners filed bills of entry which were assessed by the Customs authorities after due scrutiny and custom duty was paid accordingly on the components. The components so imported were used by the petitioners in the manufacture of CTVs in their factory. The CTVs so manufactured were meant for either export or for use in the domestic market.

Petitioners paid excise duty at the applicable rates on the CTVs. In all 94 consignments of components of CTVs were imported during the relevant period from April 1995 to January 1997.

3. A show cause notice dated 4th March, 1997 was served on the petitioner in which the 94 consignments of components of CTVs imported by it were clubbed together and it was proposed to assess them to customs duty as colour televisions. In the show cause notice a demand on account of differential duty amounting to Rs. 42,89,75,196/- was suggested. The Commissioner of Customs, ICD, New Delhi, respondent No. 3, adjudicated upon the show cause notice and passed an Order dated 30th January, 1999 confirming the duty proposed in the show cause notice and also imposing a penalty of Rs. 30.19 crores on the petitioners. The petitioners filed appeal against the said order of respondent No.3 before the CEGAT. On the application seeking exemption from requirement of pre-deposit of the duty and penalty amount filed along with the appeal the CEGAT passed the impugned order directing the petitioners to deposit an amount of Rs. 20 crores as a condition precedent for hearing the appeal.

4. In the impugned order the Tribunal has noted the various issues involved in the case. The Tribunal has observed in the impugned order that the issues are complex and are to be decided only after detailed hearing. The issues noted by the Tribunal are:

- a) Interpretation of Rule 2A of the Interpretative Rules.
- b) Binding nature of the HSN Explanatory Notes and the effect of amendment in the Notes.
- c) The nature of the circulars issued by the Central Board of Excise and Customs.
- d) Whether the show cause notice is hit by time limit. This is with reference to the plea that the show cause notice was issued beyond the prescribed period.
- e) Whether there was any violation of provisions of the Exim Policy.
- f) Whether the adjudication order is beyond the scope of the show cause notice.

Besides the above points noted by the Tribunal which, according to it, raised complex issues and are to be decided after full fledged hearing some additional points which emerge from the contentions raised before this Court by the learned counsel for the petitioners arise for consideration.

5. In this behalf an important issue is whether the respondents could club together the 94 consignments involved in the case in order to make out a case that the components constitute CTVs in unassembled condition. The case of the petitioners on this point is that none of the consignments taken individually contained sufficient components so as to lead to conversion into a complete colour television. Moreover, it was submitted on behalf of the petitioners that the total member of the components taken individually was not the same so that it could be said that the components constituted a particular number of CTVs. To

illustrate, a particular component may be thousand pieces while another component may be only 500 pieces. A complete colour television set has large number of components and when the quantity of each individual component imported by the petitioners was different, it could not have been said that the components constituted a particular number of colour television sets so as to assess them as CTVs as proposed by the respondent. According to the learned counsel for the petitioners the import of components depended upon minimum limits fixed by the manufacturer of the concerned component because the component was manufactured specifically for the petitioners and the manufacturer would insist that unless a particular number of components was purchased, he would not supply. The minimum limit would vary from manufacturer to manufacturer.

6. It is interesting to note that the Tribunal has practically not given any reason for requiring the petitioners to make a pre-deposit of Rs. 20 crores. The relevant portion of the order of the Tribunal is reproduced as under :

"We, prima facie, observe that it has not been disputed by the applicants that the colour T.V. sets were assembled out of the component parts imported by them and no component part was manufactured by them or purchased indigenously. They have, however, submitted that the components imported by them were further worked upon which has been denied by the Revenue according to which the process undertaken by them is only assembly process. We are, Therefore, of the view that the applicants have not made out a prima facie case for waiver of predeposit of entire amount of duty of customs confirmed in the impugned order. The applicants have also not pleaded financial hardship. We direct the applicants to deposit Rs. 20 crores towards duty within 8 weeks."

7. It will be seen from the above passage that after noting the rival contentions of the parties, the Tribunal only observed that the applicants (petitioners) had not made out a prima facie case for waiver of pre-deposit of the entire amount of duty.

8. In the show cause notice the case of the department is that the components were imported in a CKD/SKD condition and, Therefore, it was a case of import of CTVs particularly keeping in view Rule 2(a) of the Interpretative Rules. The Commissioner of Customs while considering this has observed that it is not a case of import in SKD/CKD condition. In para 45 of the order of the Commissioner he says: "the show cause notice alleges that the imports of the components are colour television sets in CKD or SKD conditions. It is clear from the facts of the case that this was not a case of imports in SKD or CKD conditions which always presupposes that the goods were first assembled and then disassembled fully or partially for more convenient transport of goods." Further, the Commissioner has observed that this import was also not in "ready to assemble sets". This observation of the Commissioner shows that the case set up by the department has been rejected. In view of this finding of the Commissioner it will, prima facie, be difficult to accept that the components were

complete CTVs. It may be noted here that the Commissioner gave his own different reason to uphold the show cause notice. That would give rise to two further questions: Could he set up a new case? Second, was the reason correct? The net result is that the validity of the show cause notice itself is doubtful. This in our view is a very material point raised by the petitioners which persuades us to order waiver of pre-deposit of any amount.

9. Next important point for consideration at this stage for finding out whether there is a prima facie case in favor of the petitioners emerges from the argument that the 94 consignments separately imported could not be clubbed together so as to suggest that the components constituted TV sets. All the 94 consignments consisted of some components or the other. None of the consignments individually contained all the components necessary for a complete colour television set. This argument has to be considered in the light of further fact that according to the petitioners the number of components after totalling them by taking contents of all the 94 consignments together was not matching each other because some components were more in number as compared to other components. Therefore, if all the consignments were to be clubbed then also it could not lead to any exact number of complete colour TV sets. Many components would be left out while some may fall short. In such a situation could it be said that it was a case of import of TV sets whether in unassembled or disassembled condition. Prima facie we feel that such a finding may be difficult.

10. The petitioners have raised an important legal issue about the force and binding nature of the circular No. 44/97-CUS, dated 30th September, 1997. The said circular notes that the processes involved in the factory where TV sets manufactured were elaborate and required highly skilled as well as semi-skilled workforce and technical know-how of high degree to complete the finished article from the components/parts. It was argued by the learned counsel for the petitioners that when the process of manufacture was such it could not be said that the components constitute colour TV sets even by pressing in aid Rule 2(a) of the Interpretative Rules. Rule 2(a) refers to simple proceedings in assembly of final product like screw- driver operation. It does not apply in cases of complex or elaborate procedures like which is involved in the case in hand. Respondent No.3 conceded in his order that the assembly operations undertaken by the petitioners out of the imported components for manufacturing CTVs are indeed complicated. In support of this, the petitioners added that they have been paying the excise duty on the CTVs manufactured by them. The Commissioner further observed in para 28 of his order that it "could not be nobody's case that various components of various sets when imported into India could be collectively described as TV sets. It is apparent that when imported, these components are only components."

11. Further it was argued that the circular was issued u/s 151-A of the Customs Act, 1962 and had a binding force. The said section empowers the Central Board of Excise and Customs to issue such circulars. The learned counsel for the

respondents contended that the circular was not issued u/s 151-A of the Customs Act and, Therefore, was not binding on the assessing authority. The learned counsel for the respondents fairly conceded that applicability of the circular will be a serious issue to be contested before the Tribunal when the appeal is heard on merits. Prima facie it appears to us that it will be difficult to ignore the circular. While on the circular it has to be noted that it does not make a reference to section 151-A of the said Act but there is no other provision under the Customs Act under which such circulars could be issued. It would follow that the circular has to be read as having been issued u/s 151-A and would, Therefore, be binding on the assessing authority. If the circular applies the petitioners are likely to succeed.

12. Another important point for consideration at this stage is that the show cause notice can be held to be within time only if it is held that there was suppression of material facts amounting to fraud on the part of the petitioners. Otherwise the show cause notice itself will have to be held to be beyond time and, Therefore, it will have to be quashed. In this behalf the learned counsel for the petitioners argued that bill of entires with respect to each of the 94 consignments were submitted at the time of arrival of the goods. The goods were duly dispatched as components of CTVs. While obtaining license for imports of the components the petitioners had duly described the nature of the components. Even for obtaining a license for opening the factory the petitioner had made it clear that for the first year of the manufacture, the components will have to be imported. In such facts a question would arise whether it could be said to be a case of suppression of material facts so as to amount to fraud. If it could not be said to be a case of fraud, the extended period of limitation could not be availed of to uphold the circular from the point of view of limitation period. If the show cause notice goes, the entire case of the department will fall.

13. In our view the above factors make out a strong prima facie case in favor of the petitioners. Accordingly, we direct that the appeal filed by the petitioners before the CEGAT be heard on merits without insisting on any amount being deposited by the petitioners by way of pre-deposit. The impugned order dated 17th September, 1999 passed by the Tribunal directing the petitioners to make a pre-deposit of Rs. 20 crores is hereby set aside. The petitioners will be entitled to have the appeal heard without making any pre-deposit. Petition stands disposed of. No costs.

14. We make it clear that expression of opinion by us on some of the issues involved is only for purposes of deciding prima facie nature of the petitioners case and whether the condition of pre-deposit be waived. The Tribunal will be free to decide the points in issue on merits in accordance with law without being influenced by the observations contained in this order.