(1992) 10 BOM CK 0006

In the Bombay High Court

Case No : Special Leave to Appeal (Civil) No. 8914 of 1983 in Writ Petition No. 933 of 1979

New Reshma Dyeing Pvt. Ltd. — APPELLANT

Vs

Union of India — RESPONDENT

Date of Decision : 16-10-1992

Acts Referred:
Additional Duties of Excise (Goods of Special Importance) Act, 1957 — Section 3
Constitution of India, 1950 — Article 141, 226

Citation : (1993) 65 ELT 11

Hon'ble Judges : M.L. Pendse, J;A.A. Halbe, J

Bench : Division Bench

Advocate : Shri A. Hidayatullah, Mr. S.C. Dharmadhikari, V. Sharma and Mr. J.M. Patel, for the Appellant; Shri M.I. Sethna and H.V. Mehta, for the Respondent

Judgement

Pendse, J.—These proceedings are placed before us on the request made by Union of India seeking relief against the Registry of this Court. The grievance of Union of India is that the Registry is not enforcing the Bank guarantee which the Union of India is entitled to in pursuance of the decision of the Supreme Court. To appreciate the grievance of Union of India, it is necessary to set out few facts. We propose to write an exhaustive order in view of the fact that the Union of India is required to encash several Bank guarantees in several Petitions with regard to the same subject matter.

The petitioners instituted Writ Petition No. 933 of 1979 under Article 226 of the Constitution of India before the Division Bench of this Court seeking refund of excise duty. The petitioners also sought the relief of restraining the Union of India from levying and collecting on the processed goods excise duty under Tariff Items Nos. 19 and 22 and u/s 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 from the petitioners. The Petition was admitted on April 18, 1979 and interim relief was granted on condition of petitioners furnishing 100% Bank guarantee. The Petition came up for hearing before the Division Bench of which one of us (Pendse, J.) was a party and by judgment dated June 17, 1983, the petition was dismissed. Consequently, the Union of India was entitled to enforce the Bank guarantee furnished by the petitioners.

2. The petitioners preferred SLP before the Supreme Court and Civil Appeal No. 6400 of 1983 was admitted and by an interim order, the Supreme Court directed that the petitioners should furnish Bank guarantees of 50% of duty liability. In other words, the Union of India was entitled to recover the balance amount of 50% of liability. The Appeal preferred by the petitioners to the Supreme Court was dismissed by judgment delivered on November 4, 1988 in a group of Appeals and Petitions and which is reported in Ujagar Prints Vs. Union of India (UOI), . The operative part of the judgment is to be found in Paragraphs 32 and 32A which reads as under :-

"32. In the result the appeals preferred by the Union of India are allowed and the judgment of the Gujarat High Court under appeal is set aside. The appeals preferred by the processors against the Judgment of the Bombay High Court and the writ petitions filed by the processors directly in this court are dismissed. There will, however, be no order as to costs in the appeals and the writ petitions.

32A. The Union of India and its authorities shall be entitled to recover the amounts due by way of arrears of excise duty and shall be entitled to take necessary steps to seek the enforcement of the bank guarantees, if any, for the recovery of the arrears."

3. In view of the operative order in Paragraph 32A of the judgment, the Union of India was entitled to enforce the Bank guarantees furnished by the petitioners and accordingly the Union of India approached the Registry for enforcement of Bank guarantee. The Supreme Court, in the meanwhile, on January, 27, 1989 passed a clarificatory order and which is reported in 1989 (39) E.L.T. 493 (SC) : 1989 (21) ECR 1 (SC) [Ujagar Prints etc. etc. v. Union of India & Others]. By this clarificatory order, the Supreme Court held that while ascertaining the assessable value, it is necessary to include the processor''s expenses, cost and charges plus profit, but it is not necessary to include the trader''s profits who gets the fabrics processed, because those would be post-manufacturing profits. The petitioners informed the Registry that the Bank guarantees cannot be enforced in accordance with the earlier order of the Supreme Court in Paragraph 32A of the main judgment in view of the clarification. In view of the objection raised by the Registry, the proceedings were placed before the Single Judge of this Court on September 7, 1989, the learned Judge passed the following order :-

"In view of the order of Supreme Court dated 27-1-1989 the bank guarantees not be encashed till the value is reassessed. After reassessment the requisite amount to be recovered by realising the bank guarantees unless the amount is paid or deposited by the Petitioner. Bank Guarantee to be kept alive till then by the Petitioner. They so undertake."

The petitioners thereafter filed statements of reunification before the Assistant Collector and the Assistant Collector passed an ex-parte order on March 20, 1992 rejecting the claim of the petitioners. The order was set aside by the Appellate Collector on April 16, 1992 and the proceedings were remitted back to the Assistant Collector for fresh quantification and adjudication. The Assistant Collector passed a fresh order on July 17, 1992 and called upon the petitioners to pay the sum of Rs. 5,39,81,256.31. The petitioners again preferred appeal before the Collector, Central Excise and Customs on July 29, 1992. The petitioners also filed an application for dispensing with the deposit and applied for stay of operation of the order. The proceedings before the Appellate Collector are pending.

4. The Union of India, feeling aggrieved that the Bank guarantees cannot be enforced in spite of the order passed by the Supreme Court, moved the Registry to place these proceedings for directions before this Court. It is required to be stated that all Petitions filed under Article 226 of the Constitution of India on the Appellate Side of this Court and all applications or directions in those petitions are required to be placed before the Division Bench in accordance with the rules framed by this Court. The proceedings are accordingly placed before us for direction as regards the enforcement of Bank guarantee. Shri Sethna, learned counsel appearing on behalf of the Union of India, submitted that in face of the order passed by the Supreme Court in Paragraph 32A of the main judgment, it is impossible to conceive how the Registry of this Court can refuse to enforce the Bank guarantee. The learned counsel urged that Article 141 of the Constitution of India demands that the orders of the Supreme Court shall be enforced without reservation and, therefore, the Registry could not refuse to enforce the Bank guarantee. We find considerable merit in the submission of the learned counsel and we are unable to appreciate how the Registry can decline to enforce the Bank guarantee on the specious contentions raised by the petitioners.

Shri Hidayatullah, learned counsel appearing on behalf of the petitioners, raised three contentions to urge that the Bank guarantee should not be enforced. The submission of the learned counsel is that the Single Judge of this Court by order dated September 7, 1989 and which is quoted hereinabove, directed that the Bank guarantee could not be encashed till the value is reassessed and, therefore, unless there is a final reassessment of the value, the Bank guarantees cannot be enforced. We are afraid we cannot accede to the submission. With respect to the learned Single Judge, we are unable to understand how such a direction can be given in face of the Supreme Court order that the Bank guarantees shall be enforced. Once, the Supreme Court gave such a direction, it was not open for the learned Single Judge to direct that the Bank guarantee shall not be encashed till the value is reassessed. Merely because the petitioners desired that the Assistant Collector should reassess the amount liable to duty, it is not open to prevent the Union of India from enforcing the Bank guarantee. We are unable to share the view of the learned Single Judge and, in our judgment, the Bank guarantee is liable to be enforced forthwith. Shri Hidayatullah submitted that in view of the direction given by the learned Single Judge, the enforcement of the Bank guarantee stands postponed till the final Court of this Country decides that the value assessed is correct or otherwise. In other words, Shri Hidayatullah submitted that whatever the Assistant Collector, Collector, Tribunal or this Court may decide, the Bank guarantee cannot be enforced till the issue is decided finally by Supreme Court. In our judgment, the acceptance of the contention would make mockery of the direction of the Supreme Court and we refuse to adopt any such course.

5. As a corollary to the first submission that the Assistant Collector by order dated July 17, 1992 found that the petitioners are liable to pay Rs. 5,39,81,256.31 but the assessment of the value made by the Assistant Collector is not final and the petitioners have filed an appeal against that order before the Appellate Collector. Shri Hidayatullah submitted that the Bank guarantee cannot be encashed by Union of India till the matter is finally determined by the Supreme Court. We have already held that it is impossible even to entertain such submission. The filing of the appeal against the order of the Assistant Collector, in our judgment, does not make any difference to the right of the Union of India to enforce the Bank guarantee. The mere fact that the petitioners desired that the value should be reassessed can make no difference whatsoever to the right of the Union of India to enforce the Bank guarantee.

6. The last contention urged by the learned counsel is that in view of the clarificatory order passed by the Supreme Court on January 27, 1989 and to which reference is made hereinabove, it should be held that the Supreme Court has provided that the Bank guarantees shall not be encashed. It is not possible to accede to the submission. We are unable to accede to the contention of Shri Hidayatullah that by implication the Supreme Court has directed that the Bank guarantee should not be encashed till the value is re-assessed. There is nothing in the clarificatory order to draw such an inference and in our judgment, there is no obstruction whatsoever in the way of Union of India to enforce the Bank guarantee forthwith. It is also interesting to note in this respect that right from January 27, 1989 onwards when the Supreme Court issued clarificatory order, the petitioners have made no efforts whatsoever to approach the Supreme Court to seek direction that the Bank guarantee shall not be encashed. In our judgment, it is not open for this Court now to accede to the submission of the petitioners and restrain the Union of India from enforcing the Bank guarantee.

7. Accordingly, we direct the Registry to forthwith encash the Bank guarantee as demanded by the Union of India. The Registry shall not withheld encashment for any reason whatsoever save and except the order from the Supreme Court. Shri Hidayatullah requests that to enable the petitioner to move the Supreme Court to get a clarification, the encashment should be withheld for a period of three weeks. We will accede to the request of Shri Hidayatullah and will direct the Registry to encash the Bank guarantee on November 9, 1992 positively unless the Supreme Court issue direction otherwise.

8. For the reasons recorded in the judgment, Civil Application No. 4090 of 1992 does not survive and no separate order is necessary.

