
(2000) 05 DEL CK 0075

In the Delhi High Court

Case No : C.W.P. No. 1774 of 2000 and C.M. No. 2902 of 2000

N.G. Enterprises

APPELLANT

Vs

Commissioner of Customs (Appeals)

RESPONDENT

Date of Decision : 15-05-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 54 DRJ 355 : (2000) 70 ECC 693 : (2000) 90 ECR 665 :
(2002) 144 ELT 512 : (2001) 1 RCR(Civil) 245

Hon'ble Judges : Dr. Arijit Pasayat, C.J.; D.K. Jain, J

Bench : Division Bench

Advocate : G.L. Rawal and Kuljeet Rawal, for the Appellant; Pinki Anand and Reema Khorana, for the Respondent

Final Decision : Allowed

Judgement

Arijit Pasayat, C.J.—The only question that needs adjudication in this writ petition is whether the Deputy Commissioner of Customs Respondent No. 2 was justified in seeking enforcement of the bank guarantees in respect of an order passed under the Customs Act 1962 (hereinafter referred to as the "Act").

2. A brief reference to the factual aspects as highlighted by the petitioner would suffice. A Bill of Entry No. 312970 was filed by the petitioner with the Respondent No. 2 on 7th December, 1999 seeking clearance of certain goods. On 13th January, 2000 goods were cleared on provisional assessment basis against payment of Customs duty on furnishing of a bank guarantee of Rs. 97,033/-. Show cause notice was issued in respect of the said bill of entry by the Respondent No. 2 on 22nd March, 2000. Petitioner sought for some time for inspection of documents etc. on 24th March, 2000. On 31st March, 2000 Respondent No. 2 confirmed the duty demand of Rs. 97,033/- and directed the enforcement of the bank guarantee on the same day. On 11th April, 2000 petitioner filed an appeal u/s 128(1) of the Act along with application for stay u/s 129E of the Act before the Commissioner of Customs (Appeals), New Delhi -

Respondent No. 1. It was then noticed by the petitioner that in the meantime, Respondent No. 2 had sought for enforcement of the bank guarantee from the Indian Bank who had furnished the guarantee.

3. Placing reliance on Circular No. 396/29/98-CX., dated 2nd June, 1998, learned Counsel for the petitioner submitted that direction for enforcement of the bank guarantee is uncalled for. Learned Counsel for Respondent Nos. 1 and 2 submitted that sometimes the currency of the bank guarantee expires necessitating enforcement of the guarantee when there is an adverse adjudication.

4. As noticed at the outset, the only question to be adjudicated at the present juncture is whether the direction for enforcement of the bank guarantee can be sustained in view of the Circular referred to above. The Circular in terms reads as follows :

"Circular No. 396/29/98-CX., dated the 2nd June, 1998

Realisation of Excise Dues - No coercive action till disposal of stay applications.

Subject: Central Excise - Whether coercive measure to recover duty demanded as a result of adjudication till such time as the appeal/stay applications filed by the appellant has been disposed of by Commissioner (Appeals) be taken - Regarding.

1. On the question of recovery of dues during pendency of stay application before the Commissioner (Appeals), the matter was examined by the Board and necessary instructions were issued vide Circular No. 23/90-CX. 6, dated 12-12-1990 issued from F. No. 209/107/89-CX. 6 and Circular No. 16/92-CX. 6, dated 12-11-1992 issued from F. No. 208/59/92-CX. 6. According to these instructions, Central Excise Officers were to allow a period of three months from the date of decision for payment of dues adjudicated before resorting to coercive measure to recover such dues. However, if the stay application is rejected by the Commissioner (Appeals) even before the lapse of time of three months, recovery proceedings should be initiated immediately. The Commissioner (Appeals) were also directed to dispose of stay application within the period of two months in case the Commissioner (Appeals) was not in a position to dispose of the main appeal within the same time frame.

2. Recently the Bombay High Court has ordered that Commissioner (Appeals) may be directed to dispose of stay application within the specified time limit and during the pendency of stay application no coercive action should be taken to realise the arrears of revenue.

3. Keeping the aforesaid in view, the Board has decided that no coercive action should be taken to realise the dues till the disposal of the stay application by the Commissioner (Appeals) and the Commissioner (Appeals) must dispose of the stay application within one month of its filing."

5. There is no dispute and in our view rightly that the Circular has a binding effect. In Collector of Central Excise, Patna Vs. Usha Martin Industries, etc., , the Apex Court observed that the departmental circulars are binding on Revenue authorities. It was observed, inter alia, as follows :

"21. Through a catena of decisions this Court has pronounced that Revenue cannot be permitted to take a stand contrary to the instructions issued by the Board. It is a different matter that an assessed can contest the validity or legality of a departmental instruction. But that right cannot be conceded to the department, more so when others have acted according to such instructions, vide Collector of Central Excise, Bombay Vs. Jayant Dalal Private Ltd., , M/s. Ranadey Micronutrients etc. Vs. Collector of Central Excise, , M/s. Poulouse and Mathen Vs. Collector of Central Excise and another, , British Machinery Supplies Co. Vs. Union of India (UOI) and Others, . Of course the appellate authority is also not bound by the interpretation given by the Board but the assessing officer cannot take a view contrary to the Board's interpretation."

6. Above being the position action of Respondent No. 2 seeking enforcement of the bank guarantee cannot be sustained. Till disposal of the stay application, the bank guarantee shall continue to be operative. However, the disposal of the stay application pending before the Appellate Authority would not be dependent upon the view taken by us in the aforesaid context as the application has to be considered in proper perspective, by Respondent No. 1. The writ petition is allowed to the extent indicated above.

7. Copy of the order be given dusty to Counsel for Respondents 1 and 2.