(2012) 07 GUJ CK 0064

In the Gujarat High Court

Case No : Special Civil Application No. 4559 of 2012

N.K. Proteins Ltd. and Another — APPELLANT

Vs

Union of India and Others — RESPONDENT

Date of Decision : 24-07-2012

Acts Referred:

Citation : (2013) 2 Crimes 691

Hon'ble Judges : V.M. Sahai, J;N.V. Anjaria, J

Bench : Division Bench

Advocate : Trivedi and Gupta, for Petitioners 1-2, for the Appellant; P.S. Champaneri, Advocate for Respondents 1, 3 and Mr. Y.N. Ravani, Advocate, for the Respondent

Judgement

N.V. Anjaria, J.—Heard learned advocate Mr. Uday Joshi on behalf of M/s. Trivedi and Gupta for the petitioners, Mr. P.S. Champaneri, learned Assistant Solicitor General for respondents Nos. 1 and 3 and Mr. Y.N. Ravani, learned Standing Counsel for the Central Government for respondents Nos. 2 and 4. Rule. By consent of the parties, the petition is taken up for final disposal today itself as learned advocates for the respective parties jointly submitted that the issue involved is covered by a recently pronounced judgment of a Division Bench of this court.

2. The petitioner is a company engaged in the exporting/purchasing imported oil and refining the same, etc., whereas petitioner No. 2 is the Managing Director of petitioner No. 1.

3. The petitioners have prayed for the following relief:

(A) Your Lordships may be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction, quashing and setting aside detention order dated 29.12.2011 and panchnama dated 2.2.2012 (Annexure-C colly hereto)

(B) Your Lordships may be pleased to issue an appropriate writ, order or direction, directing respondent No. 4 to release the goods under detention and/or seizure imported by the petitioner company vide Bills of Entry No. 6232921 dated 12.3.2012 (Annexure-D hereto) and 5577219 dated 27.12.2011 (Annexure-G hereto) unconditionally;

(C) Your Lordships may be pleased to issue a writ of mandamus or a writ in the nature ''of mandamus or any other appropriate writ, order or direction, directing the concerned respondents to release 1000 MT and 250 MT or crude palm oil (edible grade) in bulk and assess Bills of Entry No. 6232921 dated 12.3.2012 (Annexure-D hereto) and 5577219 dated 27.12.2011 (Annexure-G hereto), by extending the benefit of exemption notification No. 21/ 2002 read with other relevant notifications.

4. Under the impugned order dated 29.12.2011, the consignments of goods declared as crude palm oil (edible oil) imported by the petitioner have been detained by the customs authorities. It was the case of the petitioner company that it had imported those goods under Bills of Entry No. 6232921 doted 12.3.2012 and No. 5577219 dated 27.12.2011 giving the description of the goods duly classifying them and that it was entitled to the benefit of exemption of customs duty under notification No. 21 of 2002 [Entry 30 (IIA)]. The customs authorities passed the detention order on the ground that the acid value in the goods in question was beyond prescribed limit, and therefore, the goods would not qualify for benefit of exemption/concessional rate of duty.

5. Learned advocates appearing for the respective parties are ad idem that the facts involved in the present petition are similar and the controversy is identical to one involved in Cargill India Private Ltd. v. Union of India being in S.C.A. No. 1051 of 2012 and group of cognate petitions, which came to be decided by a Division Bench of this Court by a CAV Judgment dated 2.7.2012. It was submitted that that decision would govern the outcome of the present petition.

6. It would be enriching to reproduce the relevant extracts from the aforesaid judgment:

6....In the case before us, the specific defence of the Revenue is that it is not challenging the question of importability of the goods as a prohibitive goods but its contention is that this type of goods is not entitled to exemption under the customs notification No. 21 of 2002 as the acid value is more than 10 and for that reason, it has permitted provisional release of the goods on conditions.

8....the only question that arises for determination in this application is whether the Revenue was justified in refusing the benefit of exemption Notification No. 21 dated 1st March 2002, Sl. No. 30 as amended simply because on chemical analysis of the sample drawn from the consignment it was observed that the acid value was about 10%.

9. After going through Sl. No. 30 of the above notification as quoted above, we

find that crude palm oil falling under Heading 1511 having Acid Value of 4 and above and the total carotenoid (as beta carotene) in the range of 250 mg/kg. to 2500 mg/kg in loose or bulk form for manufacture of refined oil, refined palmolein, vanaspati, bakery shortening or interesterified fats are totally exempted on condition No. 5.

10. There is no dispute that the consignments in question contain total carotenoid (as beta carotene) in the range of 250 mg/kg. to 2500 mg/kg but the only reason for not granting exemption is that the acid value is above 10, notwithstanding the fact that in the said notification exemption is available even in cases of crude palm oil falling under Heading 1511 having an acid value of 4 and more. According to the Revenue, as under the Prevention of Food Adulteration Rule, palm oil containing acid value of 10 or more is not fit as edible, the consignment in question having acid value of more than 10, cannot be termed as edible.

12. In the notification in question, crude palm oil falling under Heading 1511 having an acid value of 4 or more is fully exempted provided the total carotenoid (as beta carotene) is in the range of 250 mg/kg. to 2500 mg/kg. The aforesaid item has been described as edible grade only for the purpose of exemption by specifically declaring that "the following goods of edible grade, namely, (A), (B) and (C)" would be fully exempted by giving specific description of those three categories.

13. We are unable to accept the contention advanced on behalf of the learned advocate for the Revenue that we should read the notification as acid value of 4 or more but not more than 10 instead of 4 or more as indicated in the exemption notification by taking aid of the schedule of the Prevention of Food Adulteration Rule because in our opinion, help of supplementary notes under Chapter 15 cannot be taken when heading 1511 under Chapter 15 does not contain any goods of edible grade.

14. It is not a case where the petitioner has falsely declared the goods as refined vegetable oil and consequently, a food within the meaning of Food Safety and Standards Act 2006 and was ultimately found to be unfit as a food. On the face of the declaration that the same was crude palm oil (edible grade) which falls under part (II) of serial No. 30 of the exemption notification, it cannot be legitimately contended that such item became a prohibited goods within the meaning of till Customs Act.

18....we are of the view that under the notification, as the limit of acid value has been given as 4 and above, there is no reason to construe the notification by taking aid of the Prevention of Food Adulteration Rules. 1955 which has no application to the facts of the present case when the petitioners intended to import the same not as a ''food'' but as crude palm oil (edible grade) as pointed out in the exemption notification.

23. On consideration of the entire materials on record, we, therefore, hold that in

the cases before us, there was no justification for detention of the goods and issue of show cause notice of the Revenue. We have already pointed out above that in the course of hearing of these writ-applications, the Revenue modified its earlier stance by accepting that they are not claiming that the goods in question is prohibited one but restricted their contention to the question of applicability of the exemption notification only.

24. We, therefore, hold that crude palm oil imported, which falls within Serial No. 1511 having acid value of more than 4, is entitled to get benefit of exemption of duty, and such exemption cannot be taken away by adding to the words in the notification as "between 4 and 10.

7. As it is not in dispute that the issue in the present petition is identical, the judgment in Cargill India Private Ltd. (supra) governs and applies to this case as well.

8. The present petition is accordingly allowed by holding that the goods namely the crude palm oil imported under Bills of Entry No. 6232921 dated 12.3.2012 and 5577219 dated 27.12.2011 are entitled to get the benefit of exemption in duty under the said notification.

9. By virtue of interim order dated 25.4.2012 passed in this petition, the petitioners were required to give an undertaking before the respondents that in the event they fail in this petition, the petitioners would deposit within 7 days the amount which would be claimed by the respondent authorities. The said undertaking shall stand discharged as petitioners have succeeded. It is further directed that if in case the goods in question have not been yet released, the custom authorities shall release the same within a month. The petition is accordingly allowed. Rule is made absolute in the aforesaid terms. There shall be no order as to costs.