(1995) 06 BOM CK 0010

In the Bombay High Court

Case No : Writ Petition No. 2413 of 1986

N.N. Ship Builders and Engineers Pvt. Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 15-06-1995

Acts Referred:
Customs Act, 1962 — Section 111

Citation : (1995) 60 ECR 405 : (1995) 80 ELT 21

Hon'ble Judges : S.H. Kapadia, J;M.L. Pendse, J

Bench : Division Bench

Judgement

S.H. Kapadia, J.—The short question which arises for determinations in the present case is whether the petitioners were required to be registered as Small Scale Industrial Unit for claiming the benefit of importing components through Open General Licence under the said AM 1985 Policy.

2. The facts giving rise to this Petition, briefly, are as follows :- Petitioners are manufacturers of trawlers and tugs. Petitioners entered into a contract with Bombay Port Trust on 14th February, 1984 to manufacture tugs. Pursuant to the said contract, B. P. T. issued letter of Authority in favour of the petitioner on 21st February, 1985 enabling petitioners to import components for manufacture of tugs for B. P. T. Pursuant to the said contract, petitioners imported propellers under two consignments and claimed clearance for home consumption under O. G. L. vide Appendix 6 Serial No. 1 of the above mentioned Import Policy in the year 1984-1985. The Additional Collector of Customs held that the petitioners did not have registration as a Small Scale Industry Unit and in the absence of specific licence, the imports were not covered by Actual Users'' condition of the O. G. L. and, therefore, the said imports are in contravention of the provisions of Section 3 of the Import and Export (Control) Act and Section 111 of the Customs Act. Accordingly, the Additional Collector of Customs confiscated both the consignments and permitted clearance subject to payment of fine of Rs. 10,00,000/- and Rs. 40,000/- respectively in lieu of confiscation. At this stage, it

may be mentioned that prior to August 1983, Bombay Port Trust used to import tugs. However, after August 1983, Bombay Port Trust decided to invite tenders from manufacturers of tugs. The petitioners'' tender came to be accepted by Bombay Port Trust. The Bombay Port Trust thereafter awarded a contract to the petitioners on 14th February 1984 for construction of two tugs for Bombay Port Trust. To complete the chronology of events, it may be mentioned that the Additional Collector of Customs by two orders dated 26th July, 1985 and 25th October, 1985 came to the conclusion that since the petitioners were not registered as Small Scale Industry, the petitioners cannot be called as Actual Users (Industrial) and, therefore, directed the goods to be confiscated subject to payment of fine. Being aggrieved by the abovementioned two Orders passed by the Additional Collector of Customs, petitioners preferred two Appeals bearing No. 779 of 1985 and 904 of 1985. By a common Judgment and Order, impugned herein, both the Appeals came to be dismissed by CEGAT on the ground that the petitioners were not registered as Small Scale Industry and, therefore, they cannot be categorised as Actual User (Industrial). By the impugned Judgment, the Tribunal also came to the conclusion that in view of the entry at Sr. No. 30 of Appendix 7 to the Hand Book (1984-1985), petitioners constituted Shipping Industry and, therefore, they were required to obtain registration from the Sponsoring Authority.

3. At the outset. It may be mentioned that before the Appellate Tribunal, petitioners advanced various arguments. The said arguments were alternative to each other. We are not going into larger issues raised by the petitioners before the Appellate Tribunal and also in the Writ Petition. We prefer to base our finding on the basis of facts and circumstances of this case.

4. Dr. Kantawala, the learned counsel appearing on behalf of the petitioners contended that propellers for the manufacture of tug came to be imported under Item 1 of Appendix 6 to the 1985 Policy. Dr. Kantawala contended that the definition of the words "Actual User (Industrial) " in paragraph 24 of the Hand Book has been defined to mean an Industrial Undertaking, be it in large scale, small scale or cottage industry sector, engaged in the manufacture of goods for which it holds licence or Registration Certificate from the appropriate Government Authority, wherever applicable Dr. Kantawala contended that in the present case, propellers came to be imported pursuant to contract with Bombay Port Trust. That B. P. T. had itself issued a Certificate stating that components for manufacture of tugs were required to be imported from West Germany. Dr. Kantawala contended that in the facts of this case, it is not in dispute that propellers came to be imported pursuant to the contract with B. P. T. for manufacture of tugs. Dr. Kantawala further contended that the definition of the word "Actual User (Industrial)" required a letter from the Sponsoring Authority provided Appendix 7 indicated such Sponsoring Authority. In the present case, it is contended that manufacture of tugs is not an activity of ship building. Dr. Kantawala contended that in the entire Appendix 7 to the Hand Book, there is no Sponsoring Authority earmarked for manufacture of tugs. Dr. Kantawala

contended that even the definition of "Actual User (Industrial) " under Appendix 6 to the 1985 Policy does not require the importer to obtain Certificate from Sponsoring Authority. Dr. Kantawala invited our attention to Item 1 of Appendix 6 in support of his contention referred to above. In the circumstances, the petitioner contended that there was no category laid down in the Import Policy wherein any Sponsoring Authority has been stated specifically for such compliance. On the other hand, Mr. Vyas appearing on behalf of the respondents contended that the petitioners were manufacturers of Fishing Trawlers. He contended that in view of the Entry at Sr. No. 30 of Appendix 7 of the Hand Book, Customs Authorities were right in coming to the conclusion that the petitioners were engaging in ship building. Mr. Vyas on behalf of the respondents contended that in the circumstances, petitioners were required to be registered as Small Scale Industries in order to be categorised as Actual User (Industrial).

5. We find considerable merit in the contention advanced on behalf of the petitioners. The definition of the word ''Actual User'' in paragraph 24 indicates that Actual User (Industrial) shall mean Industrial Undertaking, the said Industrial Undertaking be in large scale, small scale or cottage industries sector. The Industrial Undertaking should be engaged in manufacture of goods for which it holds Registration Certificate from the appropriate Government Authority, wherever applicable. Under paragraph 24(2) Actual Users (Industrial) are those who require raw material, components, accessories and spare parts for their own use in Industrial manufacturing process. Under paragraph 24(4) various categories of Actual Users are mentioned. Under paragraph 25 of Chapter III of the Hand Book for 1984-1985, list of Sponsoring Authorities is given as per Appendix 7. In the present case, as stated hereinabove, petitioners are an Industrial Undertaking. Petitioners possess Registration Certificate issued by the Central Government (Heavy Industries). Reading the said definition under paragraph 24 of Chapter III of the Hand Book alongwith Appendix-6 Item 1, petitioners fall within the category of "Actual User". All the Authorities below have come to the conclusion that petitioners must be registered as Small Scale Industry. We have gone through Appendix 6 read with the conditions governing imports under OGL, as also paragraphs 24 and 25 of the Hand Book. There is no condition which requires the petitioners only to be registered as a Small Scale Industry. On the other hand, the definition indicates that Actual User (Industrial) is an Industrial Undertaking engaged in large scale, small scale or cottage industrial sector. Petitioners hold Registration Certificate as a Heavy Industry which is not in dispute. Appendix-6 does not indicate issuance of certificate by a Sponsoring Authority in the case of Item 1 which deals with importation of components as in the case of other items in Appendix-6. Even the list of Sponsoring Authorities mentioned in Appendix-7 of the Hand Book does not indicate that petitioners must be registered only as a Small Scale Industry. The Tribunal has invoked Entry No. 30 of Appendix-7 to the Hand Book and has given a finding that the petitioners are engaged in ship building and, therefore, they are required to obtain Certificate from the Sponsoring Authority mentioned in

Item 30 of Appendix 7. Firstly, the Additional Collector of Customs, in the present case, has held that the petitioners are not registered as an SSI Unit. Additional Collector of Customs has not invoked Entry No. 30 of Appendix-7 of the Hand Book. Secondly, petitioners are given contract by B. P. T. to manufacture tugs. In the circumstances, they cannot fall within the ambit of Shipping Industry or Shipping Company as mentioned in Item 30 of Appendix-7 to the Hand Book. Petitioners are right in their submission that there is no category laid down in the Import Policy wherein Sponsoring Authority has been specifically stated for manufacture of tugs. Lastly, in the present case, it is not in dispute that B. P. T. has given a contract to the petitioners after inviting tenders to manufacture tugs. That B. P. T. has issued a Certificate stating that petitioners are required to import components from West Germany with regard to manufacture of tugs. Petitioners have imported propellers and accessories for the manufacture of tugs. The purpose of obtaining the letter from Sponsoring Authority as a fulfilment of Actual User condition is that the importation should be genuine and that it is required for manufacturing purposes which, in the present case, is manufacture of tugs. Ultimately B. P. T. has issued a Certificate to the effect that components are required to be imported and that the contract includes import of components from West Germany. This fact has been lost sight of by the Tribunal. In the circumstances, Writ Petition succeeds.

6. For the foregoing reasons, Rule is made absolute in terms of prayer (b). However, in the facts and circumstances of the case, there will be no order as to costs.