(1995) 01 AHC CK 0115

In the Allahabad High Court

Case No : Writ Petition No. 895 of 1994

Olympic Zippers Pvt. Ltd. APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 06-01-1995

Acts Referred:

Citation : (1995) 76 ELT 546

Hon'ble Judges : S.K. Verma, J;A.P. Misra, J

Bench : Division Bench

Advocate : A.K. Sinha, for the Respondent

Final Decision : Disposed Of

Judgement

1. Heard learned counsel for the petitioner and also Sri A.K. Sinha appearing for the respondents. In view of exchange of affidavits and in accordance with the rules of the Court, the present writ petition is being disposed of finally at the stage of admission.

2. The petitioner seeks quashing of the seizures dated 23rd August, 1994 and 14th September, 1994 affected in the premises of the petitioner and further seeks a mandamus for directing the respondents to release the seized goods.

3. The case of the petitioner is that he is manufacturing mainly Polyester Zip Fasteners falling under Chapter Heading 96.07 and also narrow woven fabric falling under Chapter Heading 5806.10 of the Central Excise Tariff Act, 1985. His further case is that zip fasteners are completely exempt from Central Excise duty. The petitioners are also registered under the Small Scale Industries and are completely exempt from Central Excise Duty as their clearance of narrow woven fabrics were within the permissible limits. It is in this background, it is submitted, that the Preventive Officers visited the premises of the petitioner on 23rd August, 1994 and seized Polyester Filament yarns the raw material for Zip Fasteners. It is this seizure which is subject matter of the challenge in the present writ petition. Thereafter the petitioner through a letter dated 25th August, 1994 applied for

provisional release of the seized goods pending adjudication. However, no orders were passed on the same. Their further case is that the raw materials purchased were from the other manufacturers which have been seized by the respondents. Hence seizure of the same is also not justified. Thereafter the grievance is that instead of releasing the said seized goods the respondents visited the premises of the petitioners on 14th September, 1994 and seized zip rolls. On these facts the petitioner alleges that not only Zip Fasteners but even narrow woven fabrics are exempt from Excise Duty and reliance has been placed on the amendment to Notification No. 1/93-C.E., dated 28-2-1993 under which the narrow woven fabrics under Chapter Heading 5806.10 were made exempt from 1st April, 1994.

4. The grievance of the petitioner is that the respondent-authority by not releasing the seized goods is acting mala fide and illegally. Hence the petitioner seeks the aforesaid direction by this Court for the release of the same. According to annexure S.A. 1 to the supplementary affidavit filed by the petitioner which is an order passed by the Assistant Collector (Preventive) Central Excise, Meerut on 30th September, 1994, the following findings are recorded:

"M/s Olympic Zippers (P) Ltd. Partapur were directed to produce documents in support of the purchase of the goods under seizure. Despite summons they have failed to do so. During the course of hearing they also failed to produce any supporting document to show lawful purchase of the goods under seizure."

5. The case of the petitioner is that Polyester Filament Yarn was not manufactured by it but was purchased from the market belonging to M/s. Parasrampuria Synthetics Ltd., M/s. Reliance Industries Limited and M/s. Modipon Limited, Modinagar respectively. Hence there is no question of seizure or violation by the petitioner of any Act and Rules nor this could amount to. payment of Excise Duty on the sale of the petitioner. However, we would not like to go into the merits of the contention raised by the petitioner in this writ petition as the matter is still pending before the concerned authority. By the aforesaid order dated 30th September, 1994 the authority itself pertaining to the Polyester Filament Yarn has directed the petitioner to produce the documents in support of the purchase of the goods under seizure. It further records:

"However, as and when the supporting documents of purchase and other information as summoned/called for is produced, their request will be re-considered for suitable orders."

Learned counsel for the petitioner has urged that thereafter the petitioner has actually filed the relevant documents pertaining to the said purchases and has stated in paragraph 7 of the rejoinder affidavit that the petitioner has already submitted the invoices in original of the seized goods vide letters dated 16th November, 1994 and 31st October, 1994. In view of that statement and also in view of the order passed by the authority as aforesaid on 30th September, 1994 the authority concerned will now [issue] fresh orders on the claim of the petitioner for the release of goods taking into consideration the facts and circumstances stated above regarding claim of total exemption pertaining to both Zip Fasteners and Narrow woven fabrics. Since the matter of seizure is pending for long, it is appropriate that the authority may pass the orders after giving opportunity to the petitioner preferably within a period of one month from the date a certified copy of this order is filed by the petitioner before him. With the aforesaid observations, the writ petition is finally disposed of.

6. A certified copy of this order may be given to the learned counsel for the petitioner within a period of one week on payment of necessary charges.