
(1994) 09 CAL CK 0019
In the Calcutta High Court
Case No : Matter No. 1582 of 1994

Pankaj Guljarilal Gupta

APPELLANT

Vs

Collector of Customs

RESPONDENT

Date of Decision : 08-09-1994

Acts Referred:

Citation : (1995) 56 ECR 654 : (1995) 75 ELT 47

Hon'ble Judges : Tarun Chatterjee, J

Bench : Single Bench

Advocate : Bhaskar Prasad Gupta, Pranab Kumar Datta, Biswajit Mukherjee and Atish Dipankar Roy, for the Appellant; D. Mukherjee and S. Sengupta, for the Respondent

Judgement

Tarun Chatterjee, J.—In this writ petition, the petitioner has come up with a prayer for a direction upon the respondents to forthwith release the subject goods, namely, 5000 pieces of Taper Roller Bearings No. 32211 (of diameter 55 mm) in terms of the Order in Appeal passed by the Collector of Customs (Appeals) dated 8-4-1994 being annexure "F" to the writ petition. The writ petition arises in this manner.

2. The writ petitioner in due course of his business has imported 5000 pieces of Taper Roller Bearings No. 32211 (of diameter 55 mm) being the parts of power operated coal briquetting press machine for converting cellulosic waste materials into fuel briquettes from Czechoslovakia through their sole selling agent. After arrival of the consigned goods, the petitioner's clearing agent filed the necessary Bill of Entry bearing No. 1005 for home consumption on 16th March, 1993 along with other relevant documents for release of the goods. The case of the petitioner is that the Customs authorities denied the exemption benefit to the petitioner by classifying the said goods under Tariff Heading No. 8482.20 by holding, amongst others that, "The exemption can be given only when the bearings are used in briquetting press which has been imported now or earlier. The notification benefit is not applicable when bearing are to be used for

manufacturing of briquetting press in India." Against the said order passed by the Assistant Collector of Customs on 22-6-1993, the petitioner preferred an appeal before the Collector of Customs (Appeals). The Collector of Customs (Appeals) being satisfied with the contention of the writ petitioner by his order dated 30-8-1993 set aside the order dated 22nd June, 1993 and remanded the case for de novo examination by the Assistant Collector of Customs after following the ratio of the Supreme Court judgment in the case of Jain Engineering v. Collector of Customs, Bombay stating that "A provision in a notification should normally be interpreted in its ordinary, natural and grammatical sense. It is not permissible to import any notion of policy into it. Again an order was passed by the Assistant Collector of Customs on 1st November, 1993, refusing to accept the direction given by the appellate authority by its order dated 30th August, 1993 and the petitioner again preferred an appeal against the said order dated 1-11-1993 before the Collector of Customs (Appeals). The said appeal was allowed by the Collector of Customs (Appeals) by a reasoned order dated 8th April, 1994, making the following observations :

"In view of the ratio established in the cited judicial pronouncements discussed hereinbefore I am at a loss to support the view of the original authority in his impugned order dated 1-11-1993. Accordingly, I set aside the said order and allow the appeal. The lower authority will classify the impugned goods under Tariff sub-heading 8482.20 as usual but assess duty extending the benefit of Notification No. 113/81-Cus., dated 23-4-1981 as amended."

3. While arriving at his aforesaid finding the Collector of Customs (Appeals) also held that

"In a taxing statute one has to look merely at what is clearly said. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used."

4. On the basis of the order dated 8th April, 1994 passed by the Collector of Customs (Appeals), the writ petitioner approached the Respondent No. 2 to assess the Bill of Entry in terms of the order in appeal and release the goods at the earliest. But no step was taken although an order was passed for assessing the Bill of Entry and release of the goods by the Collector of Customs (Appeals) on 8th April, 1994. Accordingly this writ petition was moved for relief against non-compliance of the order dated 8th April, 1994 passed by the Collector of Customs (Appeals) and for release of the goods on payment of the assessed duty.

5. Mr. Gupta, counsel appearing in support of this petition relied on a decision of the Supreme Court in the case of Union of India and others Vs. Kamlakshi Finance Corporation Ltd., . It has been held by the Supreme Court in paragraph 6 at page 435 as follows :

"Shri Reddy is perhaps right in saying that the officers were not actuated by any mala fides in passing the impugned orders. They perhaps genuinely felt that the claim of the assessee was not tenable and that, if it was accepted, the Revenue

would suffer. But what Shri Reddy overlooks is that we are not concerned here with the correctness or otherwise of their conclusion or of any factual mala fides but with the fact that the officers, in reaching their conclusion, bypassed to appellate orders in regard to the same issue which were placed before them, one of the Collector (Appeals) and the other of the Tribunal. The High Court has, in our view, rightly criticised this conduct of the Assistant Collectors and the harassment to the assessee caused by the failure of these officers to give effect to the orders of authorities higher to them in the appellate hierarchy. It cannot be too vehemently emphasised that it is of utmost importance that, in disposing of the quasi-judicial issues before them, revenue officers are bound by the decisions of the appellate authorities. The order of the Appellate Collector is binding on the Assistant Collectors working within his jurisdiction and the order of the Tribunal is binding upon the Assistant Collectors and the Appellate Collectors who function under the jurisdiction of the Tribunal. The principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The mere fact that the order of the appellate authority is not "acceptable" to the department-in-itself an objectionable phrase - and is the subject matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent Court. If this healthy rule is not followed the result will only be undue harassment to assessees and chaos in administration of tax laws."

6. In another recent decision of the Supreme Court in the case of Collector of Customs, Bombay Vs. M/s. Krishna Sales (P) Ltd., , it was held in paragraph 6 at page 39 as follows :

"If the authorities are of the opinion that the goods ought not to be released pending the Appeal, the straight forward course for them is to obtain an Order of Stay or other appropriate direction from the Tribunal or the Supreme Court, as the case may be. Without obtaining such an Order they cannot refuse to implement the Order under Appeal. As is well-known, mere filing of an Appeal does not operate as a Stay or suspension of the Order appealed against. Moreover, such detention is likely to create several complications relating to the demurrage charges besides the possible deterioration of the machinery and goods. We hope and trust that the Collector of Customs, Bombay shall appropriately revise the said public notice in the light of the observations made herein. If he does not do so, there is a likelihood of the Customs Authorities being themselves made liable for demurrage charges in appropriate cases."

7. This writ petition was moved on 18th July, 1994 and it was adjourned from time to time and since then the learned counsel was directed to ascertain from the Department as to whether any stay order against the aforesaid order of the Collector of Customs (Appeals) dated 8th April, 1994 had been passed or not. The learned counsel even today after taking instructions from the Department could not produce any document to show that a stay order had been granted or any order passed by the Tribunal staying operation of the order of the Collector

of Customs (Appeals) dated 8-4-1994. It is recorded that one Mr. S.C. Jena of the Customs Department is present in court and he instructed the Ld. Counsel that he has no information regarding any one staying operation of the aforesaid order by any higher authority.

8. In the facts and circumstances of the case as discussed above and in view of the two decisions of the Supreme Court referred to earlier it must be held that, since there is no order of stay of operation of the order dated 8th April, 1994 passed by the Collector of Customs (Appeals)/ the respondents are bound to carry out the aforesaid order.

9. Accordingly I direct the Customs Authorities to proceed in terms of the order dated 8th April, 1994 passed by the Collector of Customs (Appeals) and the goods be released within two weeks from the date of communication of this order upon payment of usual customs duty.

10. Since no affidavit has been filed by the Respondents, the allegations made in the petition are not admitted by the Respondent.

11. There will be no order as to costs.

12. All parties are to act on a xerox signed copy of this dictated order on the usual undertaking.