(1987) 01 RAJ CK 0063

In the Rajasthan High Court

Case No : Civil Writ Petition No''s. 1054 and 2055 of 1984

Pesticides India and Another APPELLANT

Vs

Assistant Collector of Central Excise and Customs RESPONDENT

Date of Decision : 06-01-1987

Acts Referred:
Customs Act, 1962 — Section 12, 2(14), 45, 47, 57

Citation : (1987) 30 ELT 651 : (1987) RLW 157 : (1987) 1 WLN 370

Hon'ble Judges : K.S. Lodha, J

Bench : Single Bench

Advocate : K.N. Joshi and B.R. Mehta, for the Appellant; J.P. Joshi, for the Respondent

Final Decision : Allowed

Judgement

K.S. Lodha, J.—These two writ petitions involve a common questian of law and arise out of similar facts and, therefore, they are being disposed of by a common order.

2. The petitioners in both the cases are licencees of private bonded warehouses u/s 58 of the Customs Act, 1962 (No. LII of 1962) (hereinafter referred to as ''the Act'') and now their licences have been threatened to be cancelled/or renewal refused by the Assistant Collector, Central Excise, Udaipur on the ground that now public bonded warehouses have already been constructed by the Warehousing Corporation of India and, therefore, the private bonded warehouses should not be allowed to continue. It is on account of this invasion of their rights to hold the private bonded warehouses, that the petitioners have come up before this Court. The private bonded warehouses of petitioner No. 1 is situated at Udaisagar Road and that of petitioner No. 2 at Fatehpura crossing, Nathdwara Road, at Udaipur, which have been declared as warehousing stations. The licences granted to the petitioners since March, 1978 had been renewed upto 1983. The petitioner applied for renewal of their licences for the year 1984. In the mean time, by order dated 14.11.83, the Assistant Collector, Central Excise

Division, Udaipur has appointed a public warehouse at Shreeji Industries, Pratap Nagar, Udaipur and on this ground in December, 1983, show cause notices have been issued to the petitioners as to why their licences may not be cancelled. Thereafter, without taking into consideration their replies, licence of petitioner No. 1 has been refused to be renewed and that of petitioner No. 2 has been renewed with the condition that no fresh arrivals be stored in the bonded warehouse.

3. The case of the petitioners is that the licences granted to them for private bonded warehouses cannot be cancelled or their renewal refused only on the ground that the public warehouses have now been constructed by the Warehousing Corporation of India. They have prayed for issue of a writ, direction or order directing the non-petitioners not to cancel the licences already granted to them and further directing them to renew the same. The Assistant Collector, Central Excise and Customs has supported the proposed action in the replies filed by him in both the writ petitions and has emphasized the fact that when public warehouses are available with the Warehousing Corporation of India, private bonded warehouses have no right to continue and that their licences can be cancelled u/s 58(2)(a) of the Act by giving one month''s notice in writing to the licencees.

4. In order to appreciate the dispute between parties, it will be proper to first have a look at the relevant provisions of the Act. Section 12 of the Act provides for levy of customs duty on goods imported into or exported from India, such goods being called dutiable goods in terms of Section 2(14) of the Act. u/s 45 of the Act, all imported goods unloaded into a customs area have to remain in the custody of such person, as may be approved by the Collector of Customs until they are cleared for home consumption or are warehoused or transhipped in accordance with provisions of Chapter VIII. Section 47, then, provides clearance of goods for home consumption after the duty assessed thereon has already been paid. Now, before the goods are, thus, cleared for home consumption u/s 47, they have to be warehoused so as to be in the custody of the person appointed u/s 45 of the Act and it is not uncommon that in large business houses, the goods are imported or exported in big lots and payment of customs on such large lots in lump sum may not always be convenient and feasible at the time of the loading or unloading of the goods at the customs port. Therefore, the provision has been made for warehousing these goods at proper place and to be under the control and custody of the officer appointed u/s 45. Therefore, the provisions have been made for declaring the place to be warehousing station and appointing warehouses under Sections 9, 57 & 58 of the Act. Section 9 says that the Board may by notification in the official Gazette declare places to be warehousing stations at which alone public warehouses may be appointed and private warehouses may be licensed. Then Section 57 provides that at any warehousing station, the Assistant Collector of Customs may appoint public warehouses wherein dutiable goods may be deposited without payment of duty. Then, comes Section 58 providing for licensing of private warehouses. It reads as

under :-

"58. Licensing of private warehouses:- (1) At any warehousing station, the Assistant Collector of Customs may license private warehouses wherein dutiable goods imported by or on behalf of the licencee, or any other imported goods in respect of which facilities for deposit in a public warehouse are not available, may be deposited without payment of duty.

(2) The Assistant Collector of Customs may cancel a licence granted under Sub-section (1) -

(a) by giving one month''s notice in writing to the licensee; or

(b) if the licensee has contravened any provision of this Act or the rules or regulations or committed breach of any of the conditions of the licence:

Provided that before any licence is cancelled under Clause (b), the licensee shall be given a reasonable opportunity of being heard.

(3) Pending an enquiry whether a licence granted under Sub-section (1) should be cancelled under Clause (b) of Sub-section (2), the Assistant Collector of Customs may suspend the licence."

5. Chapter VIII of the Act provides that importer of any dutiable goods which have been entered in warehouses, is required to execute a bond binding himself in a sum equal to twice the duty assessed provisionally and also to bind himself to observe all the provisions of the Act, Rules and the Regulations in respect of those goods, and, thus, the facility is allowed to the importer of paying the duty by and by and not in one lump sum at the time of unloading of the goods itself.

6. It is in the background of these provisions that the question which has arisen in the present case, namely, whether private bonded warehouses which had been licensed by the Assistant Collector of Customs u/s 58 can be refused renewal and forced to avail of the services of a public bonded warehouses belonging to the warehousing Corporation as soon as such a public bonded warehouse is constructed at warehousing station and the Drivate warehouses, which had earlier been licensed be rendered useless, is to be considered. It may be mentioned here that private bonded warehouses can be classified into two viz. (i) the private bonded warehouses wherein dutiable goods imported by or on behalf of the licensee are deposited; and (ii) where the goods imported by the other dealers in respect of which the facilities for deposit in public warehouses are not available, are deposited. In the present case, we are only concerned with the first type of private bonded warehouses and, therefore, the discussion shall be confined to that type of private bonded warehouses.

7. It may at once be stated that such a question had arisen before a Division Bench of the Gujarat High Court in Special Appeal No. 714/81: Baroda Rayons Corporation, v. Superintendent, Customs and Ors., decided on 18/19.8.1983 and after a discussion of the contentions raised before it, and taking into account the

relevant provisions of the Act as referred above, the Hon''ble Judges of the Division Bench clearly held that such a course is not open to the authorities and they cannot call upon the licensees of the private bonded warehouses to stop the use of their private bonded warehouses and have recourse to the public warehouses, simply on the ground that the public warehouses have now been constructed. It is, of course, true that the Assistant Collector of Customs has jurisdiction to cancel the licences granted u/s 58 or refuse to renew the same, but that power cannot be exercised merely on the coming into existence of public warehouses at the warehousing station and the application for renewal will have to be considered on its merits, e.g. comparative facilities etc.

8. The Gujarat High Court observed :-

"13. In those petitions where the private bonded warehouses are located, as they should, in the places declared to be warehousing stations where there are no public warehouses, the action of the authorities can be easily declared to be unauthorised when they call upon the petitioners of those petitions to stop the use of their private bonded warehouses for the above mentioned purposes and to have recourse to the public warehouses situated in some other place notified as another warehousing station where a public warehouse is appointed subsequently. We see no difficulty in quashing the orders of the authorities in this regard and even a bare look at the provisions of Section 9, 57 & 58 of the Act would show that the action of the authorities in cancelling those licences or refusing to renew those licences or refusing to issue space certificates during the pendency of the licence period are actions without authority of law. Declaration of a place as warehousing station u/s 9 of the Act at the hands of the Board is not a meaningless exercise. A place is declared as a warehousing station so that at that place public warehouses may be appointed or private warehouses may be licensed. This is the only conceivable purpose behind declaring a particualr place as a Waehousing Station. The Parliament, by enacting Sections 9, 57 and 58 of the Act clearly provided for the above mentioned facility for the purpose of industries which cater, not only to the personal needs of their share holders, or owners but also cater to the needs of the Nation simultaneously. It is truism to state that industries ultimately contribute substantially to the National Wealth which is to be shared by all of its citizens. The concern for the welfare of the industries is ultimately the concern of the Nation as a whole. We extract from para 24 of the judgment of the Supreme Court in the case of Excel Wear and Others Vs. Union of India (UOI) and Others, certain enunciation of law reproduced there from the earlier judgment:

"With the use of the philosophy of Socialism, the doctrine of State ownership has been often discussed by political and economic thinkers. Broadly speaking, this discussion discloses a difference in approach. To the socialist, nationalisation or State ownership is a matter of principle and its justification is the general motion of social welfare. To the nationality, nationalisation only when it appeared clear that State ownership would be more efficient, more economical and more productive. The former approach was not very much influenced by those considerations and treated it a matter of principle that all important and nation building industries should come under State control. The first approach is doctrinaire, while the second is pragmatic. The first proceeds on the general ground that all national wealth and means of producing it should come under national control, whilst the second supports nationalisation only on grounds of efficiency and increased out-put."

14. Both public and private sectors are recognised'' to play their roles to the common well of the common man and this concern of the Parliament is written-large on the provisions of Section 9, 57 and 58 of the Act. So, we have no hesitation in holding that whenever any place is declared to be a warehousing station, there must be a facility for deposit in a bonded warehouse of imported goods without payment of duty. If this facility in that warehousing station is not available, the declaration of that place as a warehousing station becomes absolutely meaningless. At any rate it would defeat the object of that Act.

15. There had arisen a similar situation before the Madhya Pradesh High Court in the case of the Asbestos Cement Limited and Anr. v. the Union of India and Ors. : 1983 E.L.T. P. 883 (M.P.). The Division Bench consisting of the Chief Justice Mr. G.P. Singh and Justice B.C. Verma, speaking through the Chief Justice has dealt with the question very elaborately and we would conclude this question by referring to certain observations from paragrph 6 of the said reported judgment :

"... The availability of these facilities on a proper construction of Section 58, must be considered with reference to the particular warehousing station for which the application is made to licence a private warehouse. If an application for licensing a private warehouse can be rejected u/s 58 on the consideration that facilities for deposit in a public warehouse at any warehousing station are available, it will make Section 58 a dead letter, for such facilities would always be available at some warehousing station at any rate in the public warehouse appointed at the ports of import which are all warehousing stations. When u/s 9 the Board declares a place to be a warehousing station it must be presumed that it has considered that it is such place where having regard to the needs of Trade and Industry public Warehouses may be appointed, and private warehouses may be licensed... But when at a particular warehousing station there is no public warehouse appointed u/s 57, the licensing authority cannot refuse application for a licence or cancel a licence or refuse of a licence for a private warehouse on the ground that facilities are available in a public warehouse at a different warehousing station. For example, if an application is made for a private warehouse of a warehousing station in the interior which has not public warehouse it would not be open to the Assistant Collector to refuse the application on the ground that facilities are available at the ports of importation such as Bombay or Calcutta for deposit of imported goods in a public warehouse. On the same reasoning it was not open to the customs authorities to cancel the petitioner company''s licence of private warehouse at Kymore or refuse its renewal on the ground that there was now a public warehouse at Bhopal where facilities for storing are available."

9. I am in respectul agreement with the observations of the Division Bench of the Gujarat High Court referred to above in these circumstances, I do not feel called upon to discuss the matter in a great detail. Copies of that judgment have already been filed before the Assistant Collector, Central Excise and Customs, Jaipur. The judgment referred to above has considered all aspects of the matter and the repetition of the grounds on which that judgment is based, would not be proper or necessary. After a thorough discussion, their Lordships reached the conclusion :

"We find no difficulty in setting aside the action of the Assistant Collector of Customs in refusing or threatening to refuse and or refusing space certificates refusing the renewals of licences on the plea that the board had taken a decision not to allow private warehouse to operate in the area (and not a warehousing station u/s 9 of the Act) where or whereabouts public warehouses are available."

10. Their Lordships then took into consideration the guidelines issued by the Board and observed :-

"We, therefore, hold that it was not within the competence of the Board, if at all it intended so to do to lay down an unflexible and rigid direction that wherever a public warehouse is appointed, no private licence in a particular geographical area, shall be renewed or granted."

11. After further interpreting Section 58, they observed :-

"We have already made it clear that every case is to be decided on its own merits in the light of all attending circumstances and while dealing with such applications the sine qua non in the availability of a facility to deposit goods without payment of duty. If that could be reasonably extended to an industry, then it will be within the province of the concerned authority not to grant or renew a licence to a private warehouse and we have also held that this being a question arising more on objective facts where an applicant for a licence for private warehouse can have many things to say, such a decision is not to be arrived at ex parte without affording an opportunity of some say to the applicant for such a licence."

12. The refusal of renewal of the licences of the petitioners in these cases is based merely on the ground of the construction of the public warehouses by the Warehousing Corporation of India and, therefore, that decision cannot be upheld. The Assistant Collector of the Customs will have to reconsider the question of renewal of the licences of the petitioners after affording them an opportunity of being heard and keeping in view the observations made above.

13. The writ petitions are, accordingly, allowed. The orders refusing renewal of the petitioner No. 1''s licence of private bonded warehouses and conditional renewal of non-petitioner No. 2''s licence are set aside and the Assistant

Collector of Customs, Udaipur is directed to decide their applications for renewal of the licences afresh keeping in view the observations made above. Till the applications are thus decided afresh, the facilities available to the petitioners at present shall continue.

14. In the circumstances of the case, there shall be no order as to costs.

