(2010) 05 GUJ CK 0034

In the Gujarat High Court

Case No : Special Civil Application No. 3139 of 2010

Prakash Diamond Private Limited — APPELLANT

Vs

Union of India (UOI) and Others — RESPONDENT

Date of Decision : 03-05-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 111, 125
General Clauses Act, 1897 — Section 10

Citation : (2010) 179 ECR 211 : (2011) 263 ELT 199

Hon'ble Judges : Harsha Devani, J;D.A. Mehta, J

Bench : Division Bench

Advocate : Hardik P. Modh, for the Appellant; R.M. Chhaya, for the Respondent

Final Decision : Allowed

Judgement

H.N. Devani, J.—Considering the fact that the controversy involved in the present case lies in a narrow compass, the petition is taken up for final hearing today. Hence, rule. Learned advocate for the respondents is directed to waive service of rule.

2. In this petition under Article 226 of the Constitution of India, the petitioner has prayed for the following substantive relief:

[a] That this Hon''ble Court 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 Respondents to forthwith allow the Petitioners clearance of the consignment of CPDs weighing 784.28 carats imported and sought to be cleared under Bill of Entry 009080 dated 26.11.08.

[aa] That this Hon''ble Court be pleased to issue a Writ of Mandamus or a Writ in the nature of Mandamus, or any other appropriate Writ, Order or direction, setting aside the letter dated 17-3-2010 issued by Respondent 4.

3. The facts stated briefly are that the petitioner is a Private Limited Company

engaged in the business of trading in cut and polished diamonds. Pursuant to show cause notice dated 27th October 2010, Order-in-Original dated 26th November 2009 came to be made by Commissioner of Customs, respondent No. 2 herein, inter alia, re-determining the value of 784.28 carats of Cut and Polished Diamonds imported by the petitioner at US $ 11,25,445.50 (Rs. 5,67,22,453/- as per the applicable rate) and ordering confiscation of the same u/s 111(d)(m) of the Customs Act, 1962 (the Act). However, option was given to redeem the same on payment of fine of Rs. 25 lakhs, which was required to be exercised within 30 days thereof. Penalty of Rs. 5 lakhs came to be imposed on the petitioner and Rs. 1 lakh each on two of its directoRs. Penalty of Rs. 10 lakhs came to be imposed on one Shri Prakash Sancheti.

4. On receipt of the order dated 26th November 2009, the petitioner obtained demand drafts dated 19.12.09 for Rs. 25 lakhs imposed in lieu of confiscation, for Rs. 5 lakhs towards penalty imposed on the petitioner, and for Rs. 1 lakh each towards penalty imposed on the two directoRs. The petitioner also addressed a letter dated 24th December 2009 to the respondent No. 2 informing him that they were making payment of redemption fine and penalty as aforesaid under protest. Details of the payment were also set out in the said letter, which appears to have been received by the respondent No. 2 on 30.12.09. Request was also made to pass necessary instructions to the concerned officers to release the cut and polished diamonds seized under panchnama dated 27th August 2008 at the earliest. On 29th December 2009, petitioner deposited all the aforesaid demand drafts in the Bank of Baroda vide TR-6 challans dated 29th December 2009 and intimated Assistant Commissioner of Customs, respondent No. 3 for early release of cut and polished diamonds since the same were urgently required for the purpose of business commitments and to save demurrage/detention charges. The petitioner and its directors also preferred appeals and stay applications before the Customs, Excise & Service Tax Appellate Tribunal on 5th January 2010, challenging the order dated 26th November 2009. Since the petitioner did not receive any communication from the respondents, the petitioner addressed letters dated 21st January 2010 and 13th February 2010 requesting the respondents to release the cut and polished diamonds. Vide letter dated 17th March 2010, Deputy Commissioner (O&A), respondent No. 4 herein, informed the petitioner that the respondent No. 2 had vide the Order-in-Original permitted the petitioner to get the goods released within thirty days on payment of redemption of fine. Once redemption fine was not paid within that period, the goods could not be allowed to be redeemed as per Order-in-Original. Condoning delay virtually amounts to changing the Order-in-Original which was not permissible in law. The petitioner addressed a letter dated 19th March, 2010 to the respondent No. 4 stating that no time limit had been prescribed u/s 125 of the Act for redemption of the goods; hence, the objection raised in the letter dated 13th March 2010 was unsustainable. Since, despite several requests, the goods of the petitioner were not released, the petitioner has approached this Court by way of the present petition seeking the relief noted hereinabove.

5. Heard Mr. Hardik Modh, learned advocate for the petitioner and Mr. R.M. Chhaya, learned Senior Standing Counsel for the respondents.

6. The learned advocate for the petitioner has submitted that Section 125 of the Act does not prescribe any period of limitation for redemption of goods. Hence, the respondents were not justified in not permitting the petitioner to redeem the goods in question. It is further submitted that the petitioner had obtained demand drafts in favour of the respondents and had deposited the same with the Bank of Baroda vide TR-6 challans dated 29th December 2009. It is pointed out that the Order-in-Original is dated 26th November 2009, hence, the period of thirty days in terms of the said order would expire on 27th December 2009; that 25th, 26th 27th and 28th December 2009 were holidays. Hence, by depositing the Demand Drafts with TR-6 challans dated 29.12.2009, there was substantial compliance with the order of the respondent No. 2. Hence, there was no justification on part of the respondents in not releasing the goods in question.

7. On the other hand, Mr. R.M. Chhaya, learned Senior Standing Counsel for the respondents has invited attention to the affidavit in-reply dated 7th April, 2010 made on behalf of the respondents and has placed reliance upon the averments made therein.

8. A perusal of the averments made in the affidavit in-reply indicates that it is the case of the respondents that the petitioner has not redeemed the goods in question in terms of the order dated 26th November 2009, hence, condoning the delay would amount to review of the order which is not permissible in law. According to the respondents, even though the purported demand drafts had been prepared on 19th December 2009, as the redemption fine had not been paid within the stipulated time of thirty days, the goods in question cannot be allowed to be redeemed.

9. From the averments made in the petition, which have not been denied in the affidavit in-reply, it is apparent that the petitioner had deposited the demand drafts dated 19.12.2009 as detailed in the letter dated 24th December, 2009 (Annexure-F) with the Bank of Baroda vide TR-6 challans dated 29.12.2009. Thus, the petitioner had divested itself of the funds and the bank was in possession of funds which would be handed over the moment draft was presented and demand made. The Order-in-original is dated 26.11.2009, hence the period of thirty days from the date of the order would expire on 27.12.2009. As pointed out by the learned advocate for the petitioner, 27th and 28th December 2009 were holidays. Immediately on the next day thereafter, the petitioner has obtained TR-6 challans and deposited the demand drafts with the Bank. Hence, if the time stipulated under the said order is computed in terms of Section 10 of the General Clauses Act, the period stipulated in the order would stand extended till the next working day, that is, 29th December 2009, on which date, admittedly the petitioner had obtained the TR-6 challans and thereafter deposited the demand draft with the Bank on the very next day. In the circumstances, it cannot be stated that there is non-compliance of the order

dated 26th November 2009. In the aforesaid premises, the respondents are not justified in denying redemption of the goods in question to the petitioner on the ground that the Order-in-Original has not been complied with.

10. In the light of the aforesaid view taken by the Court, for the present, it is not necessary to go into the larger question as to whether any time limit can be stipulated for redemption of goods when Section 125 of the Act does not prescribe any period of limitation.

11. For the foregoing reasons, the petition succeeds and is, accordingly, allowed. The impugned letter dated 17th March 2010 (Annexure "K" to the petition) is hereby quashed and set aside. The respondents shall forthwith allow the petitioner to clear the consignment of cut and polished diamonds in terms of the Order-in-Original dated 26th November 2009. Rule is made absolute accordingly.

