(2001) 07 MAD CK 0074

In the Madras High Court

Case No : Writ Petition No''s. 11896 and 17960 of 1994

Prasad Productions Private Ltd. APPELLANT

Vs

Asstt. Collector of Cus., Madras RESPONDENT

Date of Decision : 31-07-2001

Acts Referred:

Citation : (2002) 141 ELT 619

Hon'ble Judges : P.D. Dinakaran, J

Bench : Single Bench

Advocate : Vijay Narayan, for the Appellant; H. Sundaram, for the Respondent

Final Decision : Allowed

Judgement

P.D. Dinakaran, J.—Petitioner''s contract for importing project materials/ machineries and other allied equipments was admittedly registered with the respondents under the provisions of the Project Imports Regulations, 1986 (hereinafter referred to as ''the Regulations'') by proceedings of the Assistant Collector of Customs, dated 15-9-1993, pursuant to the said proceedings dated 15-9-1993, the petitioner had executed a bond for a sum of Rs. 1,98,55,000.00 and also paid a sum of Rs. 94,542-00 towards 5% of C.I.F. value (Cost, Insurance and Freight Value), on 15-9-1993 itself.

2. As per Regulation 3(a) of the Regulations, an "Industrial plant" is defined as under :

Regulation 3(a) :

''Industrial plant'' means as industrial system designed to be employed directly in the performance of any process or series of processes necessary for manufacture, production or extraction of a commodity, but does not include -

(i) establishments designed to offer services of any description such as hotels, hospitals, photographic studios, photographic film processing laboratories, photocopying studios, laundries, garages and workshops; or

(ii) a single machine or a composite machine, within the meaning assigned to it, in Notes 3 and 4 to Section XVI of the said First Schedule.

Explanation : - For the purposes of Sub-clause (i), the expression "establishments designed to offer services of any description" shall not include video recording or editing units, cinematographic studios, cinematographic film processing laboratories and sound recording, processing, mixing or editing studios.

3. The above definition of "industrial plant" therefore includes the video recording or editing units, cinematographic studios, cinematographic film processing laboratories and sound recording, processing, mixing or editing studios.

4. The petitioner''s project, registered with the respondent, admittedly, provides for importing machineries that are meant to transfer film information from the negative into digitised form electronically and to manipulate, add, delete, and retransfer into film negative format, in order to produce rock-steady film incorporating the best scanning techniques.

5. Since the petitioner''s project registered with the respondent provides for manufacture of a pre-recording film with the above mentioned advanced techniques, the petitioner''s establishment by their representation dated 31-5-1994, proposed to import the following materials/machineries :

"Video Mixer, Switcher Editor"

With Matric Goose Neck Lights, Syng Pulse, Generator Rostrum for Camera, VTR Machines and Engoder, Patch Panels, Caption Camera, Video Cables, Connectors, Boots, etc. with Manuals and Extenders"

6. However, referring to a letter dated 11-4-1994 of the respondent clarifying that the equipments like Video Cameras, Professional Video Recorders, Video Editing Systems, Microphones required for setting up of a Video Studio are treated as ''service plants'' under Sub-clause (i) to Regulation 3(a) of the Regulations, the request of the petitioner dated 31-5-1994 for importing the materials/machineries, referred to above, was rejected by proceedings of the respondent dated 5-7-1994 requiring the petitioner to pay a duty at the rate of 98% as applicable to the ''service plants'', instead of duty at the rate of 37.50% as applicable to the ''industrial plants'' as per the Notification Nos. 90/94-Customs, dated 1-3-1994 and 91/94-Customs, dated 1-3-1994. Aggrieved by the same, the petitioner seeks a writ of Certiorarified Mandamus to call for the records of the respondent in File No. 537/125/94-Gr.6, dated 5-7-1994 and quash the same and to direct the respondent to permit the petitioner to import the equipment covered by the application of the petitioner in letter No. PPL/SK/PM/351/94 dated 31-5-1994 under the Project Imports Regulations, 1986 read with Notification Nos. 90/94-Cus., dated 1-3-1994 and 91/94-Cus., dated 1-3-1994.

7.1. Mr. Vijay Narayan, learned Counsel for the petitioner contends that the respondent having registered the contract by their proceedings dated 15-9-1993 under the Regulations accepting the petitioner''s project contract as an ''industrial plant'', and after satisfying that the said project is an integrated project and ultimately provides a distinct marketable commodity, is not entitled to reject the request of the petitioner to import the machineries as an ''industrial plant'', as requested in their letter dated 31-5-1994, which are a part and parcel of the said integrated project, as the same cannot be treated as ''service plant''.

7.2. Mr. Vijay Narayan, learned Counsel for the petitioner further contends that withdrawal of concession of duty, as per which the petitioner is required to pay 98% duty as applicable to ''service plants'', instead of 37.50% duty as applicable to the ''industrial plants'', even after registering the petitioner''s project as an ''industrial plant'' and permitting the petitioner to act upon, is arbitrary and unreasonable; and in any event, since the impugned machineries are to be used for the performance of any process or series of processes necessary for manufacture of a distinct product, which, admittedly falls within the definition of an ''industrial plant'', the respondent is not entitled to reject the request of the petitioner for importing the machineries mentioned in their letter dated 31-5-1994.

8. Per contra, Mr. H. Sundaram, learned Counsel for the respondent contends that, as per the letter dated 11-4-1994, the respondent has clarified that importing equipments like Video Cameras, Professional Video Recorders, Video Editing Systems, Microphones required for setting up of a Video Studio, are treated as ''service plants'' falling under the exceptions mentioned in Regulation 3(a) of the Regulations, and therefore, the respondent is right in rejecting the request of the petitioner to import machineries, and consequently, the petitioner is required to pay duty at the rate of 98% as applicable to service plants instead of duty at the rate of 37.50% as applicable to industrial plants.

9. I have given careful consideration to the submissions of both sides.

10.1. A plain reading of the definition of ''industrial plant'' defined under Regulation 3(a) of the Regulations, makes it clear that the industrial plant includes the performance of any process or series of processes necessary for manufacture, production or extraction of a commodity. Even though, two categories are exempted from the said definition, namely, (1) establishments designed to offer services of any description such as hotels, hospitals, photographic studios, photographic film processing laboratories, photocopying studios, laundries, garages and workshops; or (ii) a single machine or a composite machine, within the meaning assigned to it, in Notes 3 and 4 to Section XVI of the said First Schedule, in the instant case, we are only concerned with the first exemption.

10.2. However, in view of the explanation to Regulation 3(a) of the Regulations, Video Recording or editing units, cinematographic studios, cinematographic film processing laboratories and sound recording, processing, mixing or editing studios, are excluded from the category of ''service plants'' and as a result, what was included in the category above, stands excluded in view of the explanation and included as ''industrial plant'' and therefore, the petitioner''s machineries which are meant for manufacture, production or extraction of a commodity, namely, the end-product being rock steady pre-recorded film in negative format, is exempted from the category of ''service plant'' and included as ''industrial plant''.

10.3. That apart, the petitioner establishment had already registered their integrated project contract, which, provides for performance of any process or series of processes that are necessary for manufacturing a distinct commodity, referred to in the very contract. Therefore, unless an establishment is only meant for rendering service, even though such process or service is included for the purpose of production of a distinct commodity, the industrial plants defined under Regulation 3{a) of the Regulations shall not be, in my considered opinion, termed as a ''service plant''. Hence, having satisfied with such process or series of processes necessary for manufacture of a distinct commodity, as explained in the project contract itself, and registering the same by proceedings dated 15-9-1993, it is not permissible for the respondent to revoke such registration of contract unilaterally, by way of a clarification dated 11-4-1994, and to treat the petitioner establishment as a service plant and thereby to reject their request to import the machineries that are meant for industrial plant, governed under the contract registered with them.

10.4. In any event, letter of clarification dated 11-4-1994 of the respondent clarifying that the project import assessment to equipments like Video Cameras, Professional Video Recorders, Video Editing Systems, Microphones required for setting up of a Video Studio are treated as ''service plant'' under the Regulations, cannot prevail over the Regulation, as per which, the machineries imported by the petitioner are included as ''industrial plant'', in view of the explanation to the said Regulation.

10.4. I am, therefore, satisfied that the withdrawal of concession which is concluded in the Notification Nos. 90/94-Cus., dated 1-3-1994 and 91/94-Cus., dated 1-3-1994, treating the petitioner''s establishment as a service plant and requiring them to pay duty at the rate of 98% instead of treating them as an industrial plant with a duty of 37.50% is arbitrary and unreasonable and violative of the principles of natural justice.

Hence, I am obliged to quash the impugned proceedings. This writ petition is ordered as prayed for, No costs. Consequently, W.M.P. No. 17960 of 1994 is closed.

