(2006) 06 GUJ CK 0060

In the Gujarat High Court

Case No : Special Civil Application No. 22950 of 2005 and C.A. No''s. 733 and 735 of 2006

Rivaa Exports APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 15-06-2006

Acts Referred:
Customs Act, 1962 — Section 25(1)

Citation : (2007) 210 ELT 664

Hon'ble Judges : Y.R. Meena, Acting C.J.;D.A. Mehta, J

Bench : Division Bench

Advocate : Mihir Joshi and Amrita M. Thakore, for the Appellant; Purvish J. Malkan, for the Respondent

Final Decision : Dismissed

Judgement

1. The short controversy raised before us in this petition is whether the Settlement Commission was justified in remanding the matter to the adjudicating authority by holding that the Settlement Commission has no power to grant immunity from the payment of interest covered by bond, and on the ground that as per the decision of the Calcutta High Court in Commr. of Cus. (Port) Vs. Settlement Commission, Cus. and C. Ex., interest is payable against the contractual liability and once the applicant agreed under an agreement to pay interest, he has no legal right to claim waiver of the interest amount.

2. Learned Counsel submitted that in the present case only an undertaking has been given by the petitioner and there was no contractual obligation between the parties to pay interest. He further submitted that as per the terms and conditions of Notification No. 31/97-Cus., dated 1-4-1997, which are adopted under the undertaking, payment of interest is a statutory liability and once the payment of interest under the terms and conditions of the Notification No. 31/97 becomes statutory in nature, bond also be treated as a part of the statute. Learned Counsel for the petitioner therefore, submitted that obligation under the contract

is statutory in nature. He submits that this view has been supported by the decision of the Bombay High Court in the case of Pratibha Syntext Ltd. Vs. Union of India (UOI), He further submitted that if notification itself not provides for any condition, such a condition cannot be imposed by subsequent circular. That view has been expressed by this Court in the case of Inter Continental (India) Vs. Union of India (UOI) and Others,

3. There is no dispute on the fact that an undertaking has been given by the petitioners in form Annexure-I. As per that undertaking the petitioners are directed to pay an amount equal to duty liability on the goods cleared in terms of the said Notification No. 31/97-Cus., dated 1-4-1997 and Licence No. P/W/5200539, dated 7-7-1999, in the event of their failure to comply with the conditions of the said Notification and Licence. It is also an admitted fact that petitioner has paid appropriate amount of duty, to the extent that it has not discharged the export liability as required under the undertaking.

4. It is also true that Notification No. 31/97-Cus., dated 1-4-1997 has been issued in exercise of the powers conferred by Sub-section (1) of Section 25 of the Customs Act, 1962, wherein while exempting materials from the payment of Customs duty, in particular case a liability to pay interest has also been fixed in case the importer fails to discharge his obligation to export the goods under the Policy.

5. Now we come to the undertaking given by the petitioner. For ready reference relevant portion of the undertaking is reproduced below:

WHEREAS THE PRESIDENT OF INDIA, acting through the Assistant Commissioner of Customs, Surat, Ministry of Finance, Government of India (hereinafter referred to as the Government) has agreed to grant M/s. Parag Exports, Parag House, Near Udhna Darwaja, Ring Road, Surat 395 002, Gujarat (hereinafter referred to as the Importer/Exporter), exemption in terms of Notification No. 31/97, dated 1-4-1997 against Import Licence No. P/W/5200577, dated 23-8-1999 (hereinafter referred to as Licence for the Import of the goods mentioned therein) on the terms and conditions specified in the said Notification and Licence.

WHEREAS M/s. Parag Export have undertaken to produce evidence in respect of export obligation to be discharged against the said Licence No. P/W/5200577, dated 23-8-1999 and Notification No. 31/97, dated 1-4-1997 within 30 days from the expiry of the export obligation period. WHEREAS'' M/s. Parag Exports have further unconditionally and irrevocably undertaken to pay an amount equal to the duty leviable on the goods cleared/to be cleared in terms of said Notification No. 31/97, dated 1-4-1997 and Licence No. P/W/5200577, dated 23-8-1999 in the event of their failure to comply with the conditions of the said Notification and Licence in respect of the following consignments.

6. A perusal of the part of the undertaking clearly shows that Assistant Commissioner of Customs has, acting on behalf of His Excellency President of India, agreed to grant M/s. Parag Exports, Parag House, Near Udhna Darwaja,

Ring Road, Surat, exemption in terms of Notification No. 31/97-Cus., dated 1-4-1997 against Import Licence No. P/W/5200539 on the terms and conditions prescribed in the said Notification. In turn the petitioner has agreed to discharge the export obligation against the said Licence and Notification No. 31/97 dated 1-4-1997 and produce evidence in respect of export obligation within 30 days from the expiry of the export obligation period and if it fails to comply with the same, it has to pay an amount equal to the duty leviable on the goods cleared/to be cleared in terms of said Notification No. 31/97-Cus., dated 1-4-1997 and Licence No. P/W/5200539, dated 7-7-1999.

7. This agreement is entered into by Parag Exports on one side and The President of India on the other side, through the Assistant Commissioner, who acted on behalf of His Excellency the President of India. Exemption has been given by the Assistant Commissioner under the agreement and that export obligations are to be discharged by Parag Exports, and if it fails to discharge the obligations, then M/s. Parag Export is required to pay duty and interest thereon.

8. Therefore, it cannot be said that it is a mere undertaking. In fact, it is an agreement in form of undertaking agreed between two parties i.e. Assistant Commissioner of Customs on one side and M/s. Parag Exports on the other side.

9. The Assistant Commissioner has agreed to grant exemption in terms of Notification No. 31/97, dated 1-4-1997 against Import Licence No. P/W/5200539, dated 7-7-1999 on the terms and conditions specified in the Notification and Licence and failure to comply with the terms and conditions would necessarily cast a liability on M/s. Parag Exports to pay duty as well as interest as per Notification No. 31/97-Cus., dated 1-4-1997.

10. Merely adopting the terms and conditions of Notification No. 31/97 by the parties does not mean that this agreement in form of undertaking has become a statutory contract.

11. This undertaking has not been given under any provisions of the Act. It is pure and simple agreement, agreed between the Assistant Commissioner of Customs, who is acting on behalf of His Excellency the President of India on one side and M/s. Parag Exports on the other side, who has agreed to discharge the export obligations and produce evidence in respect of export obligation to be discharged against the Licence and Notification within 30 days from the expiry of the export obligation period and have further unconditionally and irrevocably undertaken to pay an amount equal to the duty and interest leviable on the goods cleared/to be cleared in terms of the said Notification and Licence in the event of its failure to comply with the conditions.

12. Merely adopting the terms and conditions or the scheme of Notification No. 31/97-Cus., dated 1-4-1997, it cannot be said that the agreement entered into between the parties has become statutory agreement. Therefore, while petitioners agreed to pay interest under the agreement in form of undertaking, it is a contractual liability. When it is a contractual liability, the Settlement

Commission has rightly not entertained the application of the petitioner and remitted the matter back to the Deputy Commissioner for adjudication.

13. We see no substance in the petition and the same is therefore, dismissed.

14. The connected Civil Applications also stand rejected.

