(1993) 04 CAL CK 0018

In the Calcutta High Court

Case No : Matter No. 384 of 1993

Sancheti Food Products Ltd. APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 26-04-1993

Acts Referred:
Customs Act, 1962 — Section 130(1), 130(3)

Citation : (1993) 67 ELT 248

Hon'ble Judges : Ruma Pal, J

Bench : Single Bench

Advocate : Pranab Kumar Dutta and Biswajit Mukherjee, for the Appellant;Jatin Ghosh and S. Mitra, for the Respondent

Final Decision : Allowed

Judgement

Ruma Pal, J.—The point involved in this writ application is a very short one. The question is whether the Customs Authorities can refuse to comply with the order of the Tribunal.

2. The facts of the case are not really relevant and are, therefore, stated very briefly. The petitioners had purchased three trawlers which had been confiscated. The petitioners paid the purchase price. According to the petitioners in addition to purchase price the petitioner was made to pay an amount on account of Customs Duties. It was later found by the petitioners that the petitioners were not liable to pay Customs Duty and accordingly they made an application for refund. The application for refund was rejected by the Assistant Collector. The Collector (Appeals) also rejected the petitioner''s appeal. The Tribunal, however, upheld the contention of the petitioners and directed the Customs Authorities to refund the amount of duty amounting to Rs. 6,81,923/- to the petitioners subject to their executing a personal bond of guarantee along with the surety to the effect that the three trawlers in question would not be broken up in future and in case of their break up, they would refund back the said amount immediately thereafter. This judgment of the Tribunal is dated 16-1-1992. The Customs

Department thereafter moved a reference application u/s 130(1) of the Customs Act, 1962 before the Tribunal. The reference application was rejected on 9th September, 1992. The Customs Authorities did not make payment in terms of the Tribunal''s judgment and order dated 16-1-1992. The petitioners thereafter filed this writ application for a mandamus directing the respondent authorities to comply with the order of the Tribunal.

3. The respondent authorities have stated that in fact the amount which the petitioner was claiming had not been paid on account of Customs Duty but was part of the purchase price. In the Affidavit-in-Opposition the respondents have stated that the amount had been deposited with the respondent as and by way of security deposit against any future scraping of the three trawlers. Thirdly, it is stated that the department had filed a reference application u/s 130(3) of the Act on 12th March, 1993 before this Court. It is, therefore, contended that the amount cannot be paid to the petitioners. As far as the first two contentions are concerned they relate to the merits of the case. This Court is not called upon to decide the same. The merits have been determined by the Tribunal. That the Tribunal''s decision is binding upon the Customs Officers is not disputed by the respondents. The Customs Officers are, therefore, bound to carry out the directions of the Tribunal. The mere fact that the application u/s 130(3) of the Act has been filed does not mean that that acts as a stay of the operation of the judgment and order of the Tribunal dated 16th January, 1992.

4. For the reasons aforesaid the application of the petitioners must be allowed. There will be an order in terms of prayer (a) subject to the same terms and conditions imposed by the Tribunal in its judgment and order dated 16th January, 1992. There will be no order as to costs. The payment as directed by this order is to be made within a period of four weeks from the date of communication of the operative portion of this order upon usual undertaking.

5. All parties concerned to act on the signed copy of this dictated order on the usual undertaking.