(1989) 08 CAL CK 0031

In the Calcutta High Court

Case No : Matter No. 1783 of 1989

Shawkat Kamal APPELLANT

Vs

Collector of Customs and Others RESPONDENT

Date of Decision : 28-08-1989

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (1990) 1 CALLT 78 : (1991) 38 ECR 609 : (1989) 44 ELT 409

Hon'ble Judges : Susanta Chatterji, J

Bench : Single Bench

Advocate : S. Pal, for the Appellant;Sanjay Bhattacharjee, for the Respondent

Judgement

Susanta Chatterji, J.—The present writ petition under Article 226 of the Constitution of India has been filed, praying inter alia for issuance of a Writ of Mandamus commanding the respondents to assess forthwith the Bill of Entry being Annexure "E" as referred in the petition on the basis of Exemption Notification No. 224/85-Cus, dated 9th July, 1985, and 158/85-Cus, dated 24th May, 1985 as amended by 225/85-Cus, dated 9th July, 1985 without any objection whatsoever and further commanding the respondents not to impose any condition contrary to the exemption notifications as aforesaid and for other consequential orders directing the respondents to withdraw, recall and/or rescind the endorsement on the back of the Bill of Entry submitted by the petitioner being Annexure "E" to the writ petition. It is stated that the petitioner is carrying on business under the name and style of "ES-KAY LEATHER PRODUCTS", as sole proprietor thereof. He claims to be a registered exporter under the Council for Leather Exports as manufacturer-exporter having registration certificate dated 26th July, 1985. ''ES-Kay Leather Products'' allegedly a registered SSI Unit under the Directorate of Cottage and Small-Scale Industries bearing proper registration number. It is further stated that in the usual course of business the petitioner entered into a contract with MESSRS. METAPLAST GMBH COMPANY of West Germany for supply of stamping foils for the purpose of stamping brand names in different colours on the leather products as also to foil leather in different shapes. It is the specific case of the petitioner that he is an "actual user" within the meaning of the Imports and Exports Policy 1988-91 and stamping foils are items of raw materials components and samples allowed for import under Open General Licence by actual user (industrial) subject to an actual user conditions and the same appear in Appendix VI, List 8 Part I of the Imports & Exports Policy, 198891 at Serial No. 558. It is placed on record that the foreign seller despatched the one consignment of metalised stamp-foils contained in 8 (eight) Pallets on 15 (fifteen) packages and the consignment arrived at the Calcutta Airport and was duly discharged. The petitioner is alleged to have instructed its clearing agents to file Bill of Entry for home consumption who in turn filed the same and a copy of the said bill is marked annexure "E" to the writ petition. A statement u/s 108 of the Customs Act was taken from the petitioner where it is made clear that the goods imported with the use in leather industry. It is further placed on record that stamping foils are cleared under Chapter 32 of the First Schedule of the Customs Tariff Act, 1975 and the rate of duty was specified against the said subheading in the Customs Tariff Act in 150% + Rs. 15/- per kg. By exemption notification, dated July 9, 1985 the rate of basic Custom duty to ail exemption notification No. 224/85-Cus, dated July 9, 1985 the rate of basic Custom duty on Stamping Foils was reduced to 40% ad valorem and the whole of additional duty was exempted. There are other notifications which exempted said goods from the whole of auxiliary duty leviable under sub-section (1) of Section 43 of the Finance Act. It is strongly alleged by the petitioner that the Custom Authorities even after filing of relevant documents including Bill of Entry are not releasing the goods without any reason whatsoever. According to the petitioner, he was informed in or around April, 1989 that in order to get release of the goods, the petitioner must produce :

(i) End Use Bond;

(ii) Bank Guarantee for whole of the difference between standard and concessional rate of duty with a condition that the consumption to be verified and issued by the Central Excise Authority ;

(iii) Manufacturers'' Catalogues/Literature regarding the use in leather industry;

(iv) Explanation regarding valuation in terms of 1" X 200'' (on surface area basis).

Such requirement was endorsed at the back of the Bill of Entry filed by the petitioner.

2. Elaborating all these facts in details, the petitioner has come to this Court on the ground that it is wrongful, illegal and without jurisdiction on the part of the Custom Authorities to demand compliance with the above requirements when the notification does not provide for the same. It is asserted that after the aforesaid notifications, the Custom Authorities have no jurisdiction to demand the duty so exempted or demand any security for the difference in standard rate and the concessional rate of duty.

3. The writ petition is strongly contested by the Custom Authorities by filing an affidavit. It is disclosed that during the course of searches carried by the Specially Intelligence and Investigation Branch (SUB) some catalogues of the manufacturers of the stamping foils were seized. A perusal of the said catalogue will show that the stamping foils were and are being produced for such diversified industries as packaging, greeting cards, book binding, graphic arts, radio, television, automotives etc., and there are various types of stamping foils. It is asserted that while ordering import of stamping foils, it is imperative that the importer must specify the grade/ quality as well as the colour of the Stamping Foil. The, application of each type of Stamping Foil has to be determined by factors such as general characteristics, substrates, definition, release, coverage and stamping temperature and above all the specific industry for which it is manufactured. It is claimed further that intelligence has been gathered that large quantities of Stamping Foils, cleared under Notification No. 224/85-Cus for use in the leather industry are actually sold in the open market at a very high premium to industries involved in the manufacture of greeting cards, plastic articles, packing materials, book binding, printing designs or textiles, picture frames, marking or labelling of finished products. It is placed on record that the Collectorate of Bombay intimated Calcutta Collectorate of the Custom Department about the result of the investigation as to the racket, and on the basis of that information Calcutta Collectorate undertook investigation into the importation of Stamping Foils sought to be cleared under the concessional rate of duty under Notification No. 224/85-Cus. Many houses were alleged to have been searched on the basis of the documents seized and the documents gathered. It was experienced that the exported goods were not of "foiled leather". It is the case of the contesting Custom Authorities that since the benefit of the Notification No. 224/85-Cus is subject to the Stamping Foils being used in the leather industry of the importer and because the clearance is allowed under Open General Licence subject to actual user/industrial condition before allowing the clearing of stamping foils, the importers, as indicated in the guidelines must be asked to submit the manufacturer''s catalogue to establish their claim that the stamping foils are meant for use in leather industry. It is also their case that since the importers are claiming benefit of concessional rate of duty the onus is on them to establish beyond reasonable doubt that the imported stamping foil is specially meant for use in leather industry. No vague letters or certificates may be entertained. Besides, the submissions of the manufacturer''s catalogue the importer is also required to execute an end use bond backed by bank guarantee for whole of the difference in duty between standard rate of duty and concessional rate of duty. Thus ''end use bond'' and the ''bank guarantee'' will be cancelled only after importers submit a certificate issued by the concerned Central Excise Authority to the effect that the said imported Stamping Foil was utilised by the importers in terms of Notification No. 224/85-Cus. It is specifically stated in the affidavit-in-opposition that all the terms and conditions that were put to the petitioner for fulfilment before the clearance of the goods were and are by way of abundant precaution and protecting and safeguarding the interest of

the revenue. According to the Custom Authorities if the goods are allowed to be cleared then the main evidence will go out of the hands, of the Custom Authorities.

4. It appears further that on 9th of May, 1989, the writ petition was moved for an appropriate order and on 10th of May 1989 an interim order was made to the extent that the Custom Authorities shall not force the production of the bank guarantee for release of the goods in question and further directed that the other terms as asked for by the Custom Authorities for the release of the goods as appearing in the endorsement made on the Bill of Entry may, however, be enforced. No appeal was preferred against the said order. On 17th May, 1989 a fresh application was made by the petitioner for modification of the interim order and the same was rejected and an appeal was preferred and the Division Bench also refused to pass any further interim order.

5. As agreed by the Learned Counsel appearing for the petitioner and the Custom Authorities, the entire writ petition on merit is taken up for consideration since all the affidavits have been filed and all other formalities have been complied with.

6. Mr. S. Pal, the Learned Counsel appearing for the writ petitioner has argued that the steps taken by the Custom Authorities in detaining the imported goods of the writ petitioner by putting certain unreasonable conditions, are unwarranted and uncalled for. The petitioner has no obligation to produce any manufacturer''s catalogue nor on the foreign seller is under the control of the petitioner to make the catalogues available as claimed by the Custom Authorities. Besides, the manufacturer''s catalogue will not lead to any conclusion as to the use of the Stamping Foil for the purpose of use in the leather industry as claimed by the petitioner and the claim for obtaining benefit under the exemption cannot be resisted by resorting to other methods not provided in the notification. In support of his contention he has relied upon a case of Modi Rubber Limited, Modi Nagar v. Union of India and Ors., reported in 1978 ELT. 127. He has also relied upon a case reported in State of Haryana Vs. Dalmia Dadri Cement Ltd., Mr. Pal has further added that the conditions made by the Custom Authorities to release the imported goods of the petitioner are apparently unreasonable and those based on inferences as if the petitioner imported the Stamping Foils for using the same not for leather industry and for something else. The end use form will be the clear answer as to whether the petitioner will actually use the goods for the leather industry and for nothing else. The Court may impose any condition to safeguard the interest of the revenue that the goods imported by the petitioner will be used for leather industry only so that the mere apprehension of the Custom Authorities may not put the petitioner to undue harassment, hardship and financial loss.

7. Mr. Sanjay Bhattacharjee, the Learned Counsel for the Custom Authorities has very strongly submitted that the Custom Authorities have only asked for production of the catalogues of the exporters for the purpose of establishing and finding out the basis or the reason for which such products of stamping foils have

been imported. According to him, the stamping foils were and are being used clandestinely by the importers and not for bona fide use of them in their trade and as such the precautionary measures have been taken by the Custom Authorities by making certain terms and conditions for the release of the goods in order to offend the benefit of the notification.

8. Having heard the Learned Counsel of the respective parties at length and after going through their pleadings and materials on record, it appears that for the purpose of the release of the Imported goods, the petitioner has been directed by the Custom Authorities to produce :

(i) End Use Bond.

(ii) Bank Guarantee for whole of the difference between standard and concessional rate of duty with a condition, that the consumption to be verified and issued by the Central Excise Authority.

(iii) Manufacturer''s catalogue/literature regarding the use in the leather industry.

(iv) Explanation regarding valuation in terms of 1" X 200'' (the surface area basis).

9. The petitioner being aggrieved has come to this Court. The only consideration before this Court as is to whether the conditions imposed by the Custom Authorities are permissible in law and justified and whether the interference by this Court is necessary.

10. It is admitted by both sides that exemption Notification No. 224/ 85-Cus and 158/85-Cus as amended by notification No. 225/85-Cus provide benefit to all the persons of importing Stamping Foils for the use in leather industry. The case of the petitioner is very clear and specific that he is dealing with the leather industry and for the purpose of using this Stamping Foils in his said leather industry he has imported goods from the West German seller. It is not disputed that the terms and conditions made by the Custom Authorities are not stipulated in the aforesaid notifications. On the other hand, it is a specific case of the Custom Authorities that by way of abundant precaution in order to safeguard the interest of the revenue and on the basis of their experience by necessary search and intelligent guess work they have put up the conditions by following a guideline from Bombay Collectorate. However, it appears that V. S. Deshpande, J. in the High Court at Delhi in Modi Rubber Limited v. Union of India and Ors. as reported in 1978 ELT 127 (Supra) has found that it is .quite open to the Government to grant an exemption subject to condition. If the object of the Government in granting an exemption is to benefit the consumer by the reduction of the selling price of the goods, then the Government notification granting exemption notification should itself say so. It has been observed for instance that Notification No. GSR1089, dated 29th April, 1969 expressly stated that the benefit of the exemption was to be available only to those manufacturers who produced, proof to the satisfaction of the Collector that such

benefit has been passed on by them to whom they sold the goods. Such a condition is a part of the exemption notification, for, the notification is "law", but, after communicating law such a condition cannot be imposed by administrative directions, guideline or press note. These administrative acts cannot go contrary to the statutory notification. In the case of Modi Rubber Limited as aforesaid, it was considered as to whether administrative action which is contrary to the fundamental provision of the Constitution or a law would be without jurisdiction or whether the conditions for the availablement of exemption should be a part of that notification. In the present case, regard being had to the facts and circumstances, it is clear that in the notification there is no mention of the conditions as claimed by the Custom Authority for the purpose of the release of the imported goods. By looking to State of Haryana Vs. Dalmia Dadri Cement Ltd., this Court further finds that:

"In order to get exemption u/s 5(2) (a) (iv) it is not necessary to show that the goods in question, namely, the cement supplied by the assessee in this case was actually used in the generation or distribution of electrical energy. It must be noted that the important words used in the relevant provisions are "goods for use by it in the generation or distribution of such energy". On a plain reading of the relevant clause it is clear that the expression "for use" must mean "intended for use". If the intention of the legislature was to limit the exemption only to such goods sold as were actually used by the undertaking in the generation and distribution of electrical energy, the phraseology used in the exemption clause would have been different as, for example, "goods actually used" or "goods used". 1971 Tax LR 702 (Madh Pra) and Spedding Dinga Singh and Co. Vs. The Punjab State, Distinguished."

11. Thus looking to the legal aspect of the matter, this Court finds that the conditions made by the Custom Authorities for taking precautionary measure cannot be strictly supported in law. Besides, amongst 4 (four) conditions the petitioner does not oppose with regard to the production of end use certificate. The bank guarantee is not required as found by the Trial Court as well as the Appeal Court while passing an interim order. Much more emphasis has been laid for the production of manufacturer''s catalogue/literature regarding the leather foil in the leather industry and explanation regarding valuation in terms of 1"X 200'' (on surface area basis). Upon perusal of the materials on record and considering the submissions made on behalf of the parties, this Court is of the view that the production of the Manufacturer''s catalogue/literature is not relevant at the time of the release of the goods. It is not appreciated that the onus lies upon the petitioner to produce the manufacturer''s catalogue for examination of the use of the stamping foils. The end use bond will clearly meet the purpose as to whether the stamping foil as imported is used in the leather industry or not. Similarly, there is no necessity of giving explanation regarding any valuation in terms l"X200'' as claimed by the Custom Authorities. Those two conditions as in Item Nos. (iii) and (iv) are not really relevant and required for the purpose of release of the imported Stamping Foils as the subject matter in

the instant case but the petitioner will have to execute a necessary documents and/or bonds to the satisfaction of the Custom Authorities that the Stamping Foils imported will be used in leather industry. They will produce certificate of the consumption of the imported Stamping Foils in the leather industry to be verified by the Central Excise Authority and/or any other authority concerned.

12. For the foregoing reasons, the writ petition is allowed in part to the extent that the Custom Authorities at the time of release of the imported goods as claimed in the instant case will not insist on the conditions for production of the manufacturer''s catalogue/literature regarding the use in leather industry and explanation regarding valuation in terms l"X200'' (on surface area basis) but the petitioner will have to produce end use bond and other necessary bonds as to the actual consumption of the Stamping Foils in the leather industry as indicated above. There will be no order as to costs.