
(2007) 03 MP CK 0019

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1036 of 2001

Siddhartha Tubes Ltd. and another

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 28-03-2007

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2007) 3 MPLJ 492

Hon'ble Judges : S.K. Seth, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.K. Seth, J.

Though this petition is captioned as a petition under Article 226/227 of the Constitution of India, in fact, it is a petition under Article 227 as the petitioners are assailing the order dated 15-3-2001 passed by the Customs Excise and Gold (Control) Appellate Tribunal (CEGAT for short), South Zone, Chennai in appeal against the Order passed by the Commissioner of Customs, Trichy.

Brief survey of undisputed facts. Petitioner No. 1 is a public limited company and holds Certificate of Importer-Exporter Code (D?C) issued by the Ministry of Commerce; Government of India. Petitioner No. 2 is the manufacturer of Galvanised Pipes and holds an Advance Licence under the Scheme. Duty Exemption Entitlement Certificate" (DEEC) duly endorsed in favour of Petitioner No. 1 for export. Petitioner No. 1 received an offer from a foreign buyer for export of Galvanised Pipes. It dispatched the goods after getting due clearance from the Central Excise authorities to M/s Hari and Co. Tuticorin, the Clearing and Forwarding Agent for putting the goods on board the vessel "MV Omathu Fortune1. The Clearing House Agent, submitted necessary shipping documents, including the invoice, shipping bill No. 2673 dated 21-1- 1995 to obtain clearance of the Customs Authorities for export. In the Shipping documents, net weight of

the Galvanised pipes was mentioned as 224. 260 MT. Before the goods were put on board for export, Officials of the Custom (Preventive) visited the port to verify the export consignment and directed for its weighment. This revealed that the actual weight of the consignment was only 163.060 MT as against the declared weight of 224.265 MT. As a result of larger quantity in terms of weight, the consignment was seized and proceedings for confiscation and penalty started against petitioners and M/s Hari and Co., by issuing show cause notices. So far as petitioners are concerned, basically Petitioner No. 1 contested the show cause notice. Petitioner No. 2, in reply submitted that they support whatever was stated by the Petitioner No. 1 in the reply. The Commissioner of Customs and Central Excise by order dated 28-6- 1999 found that because of mis-declaration in the shipping documents such as invoice, packing list, G. R. Form and the shipping Bill, the shipping consignment was of "prohibited goods" and as such it was liable for confiscation. Since the consignment was released provisionally for export on the bond executed by exporter subject to the outcome of proceedings, both petitioners as well as M/s Hari and Co. were held liable to pay penalty and as such were imposed penalty. On appeal, the CEGAT upheld the findings of the Commissioner so far as connivance of petitioners are concerned in the matter of misdeclaration and misrepresentation of fact regarding overweight of the shipping consignment, but reduced the amount of penalty to Rs. five lacs and two lacs. As regards M/s Hari and Co., the C and E Agent, it was let off without any penalty or consequential action. Hence this petition by the petitioners as mentioned above.

After hearing learned counsel for the parties and going through material available on record, I am of the view that there is no merit and substance in the petition and as such it deserves to be dismissed in view of the following discussion.

Learned senior counsel appearing for petitioners made two fold submissions at the time of hearing, viz. since the goods were not confiscated, no penalty could be levied. Second, that export of goods was in the required measurement in size and number of bundles tallied with the invoice, the weight of the consignment mentioned on theoretical basis was not relevant, or at any rate, as per prevalent practice opportunity ought to have been given to petitioners to amend the Shipping documents, therefore no penalty was attracted.

I do not find any force in either of the submissions. So far the first point is concerned suffice it to say that seized goods were released on bond subject to decision of proceedings initiated against petitioners now the petitioners cannot take a summersault and contend that no penalty could be levied because shipment was not confiscated. As regards the second submission, it is not in dispute that Petitioner No. 2 holds an Advance licence under the "Duty Exemption Entitlement Certificate" Scheme (DEEC) which was duly endorsed in favour of Petitioner No. 1. Instead of disassociating itself, Petitioner No. 2 thought it fit to sail along with Petitioner No. 1 obviously as the duties and obligations under the licence were mutual. Hence, authorities below rightly held

that Petitioner No. 2 was vicariously liable along with Petitioner No. 1 for the duties and obligations under the licence. Petitioner No. 1, the exporter contrary to export and import policy 1992-1997, attempted to export of larger quantity of goods in terms of weight than what was actually sought to be exported in discharge of quantity based advance licence obligations where quantity was limiting factor in order to meet export obligation against the said licence to obtain larger quantity of duty free import entitlement. In order to fulfil the export obligation with an intention to misuse the benefits under the DEEC Scheme, misdeclaration of overweight was mentioned in the shipping documents. In view of this, the contention that measurement in size and number of bundles tallied is of no consequence. The further contention that the weight was mentioned on theoretical basis to cover up the misrepresentation of facts and to avoid penalty is like chasing a teasing illusion or a rainbow. Learned counsel could not point out any statutory provision or recognized practice which permits change or amendment in shipping documents including Shipping Bill which requires a declaration as to the truth of its contents by the exporter. The Commissioner as well as the CEGAT both have given categorical findings regarding the misdeclaration. The findings do not suffer from any perversity or illegality. The scope of Article 227 is limited to keep the subordinate judicial authorities or tribunals within the bounds of their jurisdiction and this Court while exercising the supervisory jurisdiction cannot assume the role of an Appellate Authority. The findings of facts do not suffer from any jurisdictional error or irregularity. In the result, findings recorded by the Commissioner Central Excise and Customs, Trichy and the CEGAT Bench at Chennai do not call for any interference. The writ petition fails and is hereby dismissed with costs quantified at Rs. 5000/-. Order accordingly.

Petition dismissed.