(1986) 07 BOM CK 0070

In the Bombay High Court

Case No : Writ Petition No. 1378 of 1982

Silve Impex (Private) Ltd. and another — APPELLANT

Vs

Union of India and others — RESPONDENT

Date of Decision : 23-07-1986

Acts Referred:

Citation : (1988) 19 ECR 474 : (1986) 25 ELT 910

Hon'ble Judges : M.L. Pendse, J

Bench : Single Bench

Judgement

1. The petitioner No. 1 is a Private Limited Company incorporated and registered under the provisions of the Companies Act and carries on business of import and export. The Government of India published Notification dated June 9, 1978 in exercise of the powers conferred by sub-section (1) of Sec. 25 of the Customs Act, 1962. (hereinafter referred to as the "Act") exempting the goods specified in the First Schedule of the Notification and imported goods against advance licence issued under Import (Control) Order, 1955 or obtained against the advance release order on canalising agency for release of goods already imported. The goods exempted in the notification were materials required to be imported for the purpose of manufacture of goods or replenishment of the materials used in the manufacture of goods or both for execution of one or more export orders. The exemption prescribed was for the whole of the duty of customs leviable thereon as specified in the First Schedule to the Customs Tariff Act and the whole of the additional duty leviable thereon u/s 3 of the Customs Tariff Act. Item No. 38 in the First Schedule is "Iron and Steel and Articles thereof".

Appendix 19 of Import Policy for April 1981 - March 1982 deals with Duty Exemption Scheme. It reproduces the Notification issued by the Ministry of Finance (Department of Revenue) relating to the grant of Duty Exemption benefits against Advance Licences. Annexure V to Appendix 19 sets out the input-output norms of wastage as approved by the Advance Licensing Committee and prescribes that the applications of the parties whenever received for the grant of advance licences are cleared on the basis of these norms. At Serial No. 2 of this annexure is the description of the Export Product of Stainless steel pattern. The raw-material which can be imported under Advance Licence is stainless steel sheets/strips/bars and rods and the norms prescribed are in respect of 1 kilogram of export product, 1.80 kg. will be allowed to be imported and out of that, there would be duty exemption benefit in respect of 1.60 kg.

2. On the basis of the norms, the petitioners secured export orders for stainless steel goods weighing 82,250 kgs. of F.O.B. value of Rs. 63,19,000/-. In accordance with these export orders, the petitioners became entitled to import 148.05 Metric Tonnes of stainless steel sheets and out of this quantity, duty exemption benefit was available, as per the policy, for a quantity of 131.6 kgs. The petitioners applied for Advance Licence on August 19, 1981 and on September 11, 1981, received a letter from the Joint Chief Controller stating that the exports made from August 28, 1981 will be exempted towards discharge of export obligation. The Joint Chief Controller of Imports forwarded the Advance Licence to the petitioners on September 17, 1981 and the Advance Import Licence, copy of which is set out at Ex. "E" to the petition, provides that 148 Metric Tonnes can be imported and out of which 131.6 Metric Tonnes would be duty free. The licence further sets out that the export obligation imposed on the petitioners was for Rs. 82,250 Metric Tonnes of F.O.B. value of Rs. 63,19,000/-. The petitioners also received Duty Exemption Entitlement Certificate dated September 18, 1981 setting out the quantity of import which would be duty free. In pursuance of this licence and the certificate, the petitioners opened three irrevocable letters of credit in favour of the foreign suppliers for import of raw-material of 148 Metric Tonnes of value of Rs. 27,43,462/-. The three irrevocable letters of credit were opened on October 5, 1981, October 15, 1981, and October 19, 1981 respectively. On November 19, 1981, the Import Licence for Exchange Control was duly endorsed and was fully utilised. On November 22, 1981, the petitioner No. 1 and M/s. Silver Steel Industries, who are the manufacturers of the goods to be exported executed a joint bond for export obligation for Rs. 62,18,100/- and furnished Bank guarantee for 25% of the said sum.

On November 19, 1981, the Joint Chief Controller of Imports addressed a letter to the petitioner calling upon to submit the licence for carrying out necessary amendment. The petitioners made enquiries as to what are the proposed amendments and learnt that the Joint Chief Controller was desirous of reducing the quantity of import on the basis of alteration of norms, set out under Annexure V to Appendix 19 of the Import Policy. The petitioners thereupon addressed letter to the Joint Chief Controller on December 1, 1980 complaining that the norms cannot be altered. The Chief Controller thereafter called upon the petitioners to furnish bond with Bank guarantee and sought amendment of the earlier bond given by the petitioners. The petitioners had no objection to give further Bank guarantee and to amend the bond. On January 26, 1982, the Joint Chief Controller, Import, amended the Advance Licence and Duty Exemption Entitlement Certificate setting out that the total quantity of import would be only

109.4 Metric Tonnes of C.I.F. value of Rs. 22,97,400/- and out of which duty free quantity would be 94.6 Metric Tonnes.

The petitioners imported two consignments of 32 Metric Tonnes and 50 Metric Tonnes and the same were cleared on February 1, and February 4, 1982 respectively. In March 1982, the consignment of 26 Metric Tonnes arrived in Bombay. On March 26, 1982, the Chief Controller of Imports addressed letter to the petitioners permitting import of 108 Metric Tonnes instead of 94.6 Metric Tonnes under Duty Exemption benefit but the letter did not give any indication of increase in the total quantity of permissible import. Thereafter, large correspondence transpired between the petitioners and the Joint Chief Controller, as well as the Chief Controller, but the request of the petitioners to restore the quota provided initially in the Advance Licence was turned down. The petitioners were informed that as the petitioners were exporting spoons, the wastage permissible is less and, therefore, Advance Licencing Committee had decided to alter the norms.

3. On July 14, 1982, the petitioners filed the present petition complaining against the action of the respondents and the petitioners were permitted to clear the goods on furnishing Bank guarantee for the differential amounts. The petitioners were required to furnish Bank guarantee of Rs. 10,00,000/- as well as Rs. 15,54,525/-. In pursuance of the interim order passed by this Court, the petitioners were ultimately able to import the entire quantity of 148 Metric Tonnes of stainless steel sheets as originally mentioned in the Advance Import Licence. The petitioners applied for extension of the period for fulfillment of the export obligations but the respondents informed that extension cannot be granted as the matter is sub-judice. The Joint Chief Controller of Imports and Exports on January 27, 1983 issued order of forfeiting the bond amount of Rs. 51,59,150/- on the ground of failure of the petitioners to carry out the obligation of export. The authorities also placed the petitioners on the list of defaulters and directed adjustment of replenishment licence to the extent of Rs. 22,97,400/-. The authorities also proceeded to enforce the Bank guarantees and thereupon the petitioners amended the petition and sought appropriate interim reliefs.

4. Shri Parekh, learned counsel appearing on behalf of the petitioners, submitted that the petitioners had compiled with all the requirements of the Duty Exemption Scheme and the Advance Licence was issued to the petitioners by taking into consideration the norms fixed by the Advance Licencing Committee and published as Annexure V to Appendix 19. The learned counsel urged that once the norms were fixed by the Advance Licencing Committee and the Advance Licence is issued in pursuance of these norms, then it was not open for the authorities at the subsequent date to amend the licence and the Duty Exemption Certificate on the ground that the norms were altered. Shri Parekh also submitted that the petitioners had incurred obligation by opening irrevocable letters of credit on the basis of Advance Licence issued by the Joint Chief Controller and it is not permissible subsequently to amend the licence and put

the petitioners to great disadvantage. There is considerable merit in the submission of the learned counsel. On behalf of the Department, return dated August 2, 1982 sworn by G.R. Nair, Deputy Chief Controller of Imports and Exports, Bombay was filed at the stage of admission. The Department did not file any return in answer to the petition. In the return filed by Shri Nair, it is stated in paragraph 5 that in accordance with paragraph 8 of the Duty Exemption Scheme and the Import Policy, the Advance Licencing Committee was informed ex-post-facto about the issue of advance licence to the petitioners. It is further claimed that the Advance Licencing Committee felt that as the petitioners were exporting only stainless steel spoons, the input-output norms approved for stainless steel cutlery could not be adopted and the quantity of import of stainless steel sheets should be reduced. The return further sets out that the Office of the Licencing authority at Bombay accordingly proceeded to amend the licence.

Shri Shah, learned counsel appearing on behalf of the Department, submitted that the norms were declared by publication of Import Policy and the norms were fixed in respect of import of item of stainless steel cutlery. The learned counsel suggested that the spoons which the petitioners desire to export may not attract the item of stainless cutlery but would fall under the category of stainless steel utensils. It is impossible to accept the suggestion. In normal parlance, spoon comes within the ambit of cutlery and, by no stretch of imagination, spoons can be described as utensils. I enquired from Shri Shah as to whether the Advance Licencing Committee had taken any decision of altering the norms and whether such decision was published for information of the parties who were desirous of taking advantage of the Duty Exemption benefit. Shri Shah very fairly stated that such decision was not published, nor any party was made aware of it. I called upon Shri Shah to produce the decision reached by the Advance Licencing Committee to alter the norms, but Shri Shah was unable to do so on the ground that the relevant file is not available with him. It is difficult to accept the claim of the Department that Advance Licencing Committee had decided to alter the norms approved for stainless steel cutlery because the petitioners were desirous of exporting stainless steel spoons. It is not possible to examine the claim of the Department in absence of the original decision or the copy of the same. Secondly, it is difficult to conceive how the Advance Licencing Committee can alter the norms after the norms were published by the Import Policy and the parties have acted upon the same and have opened irrevocable letters of credit. The parties act on the basis of the publication of the Import Policy and it is not permissible to alter the norms fixed under the policy to the detriment of such parties. It also cannot be overlooked that the petitioners had opened irrevocable letters of credit in October-November 1981 and the Joint Chief Controller of Imports called upon the petitioners to tender the Advance Licence for necessary amendment only after the date of opening of the irrevocable letters of credit. In my judgment, the action of the Joint Chief Controller in amending the licence and the Duty Exemption Certificate was clearly illegal and cannot be sustained. The petitioners are entitled to import the quantity set out originally in the Advance

Import Licence i.e. 148 Metric Tonnes and are also entitled to claim Duty Exemption in respect of 131.6 Metric Tonnes.

5. Shri Shah then submitted that inspite of the fact that the petitioners imported the entire quantity of 148 Metric Tonnes of stainless steel in pursuance of the interim order passed by this Court, the petitioners had not cared to carry out their export obligation. Shri Shah complains that the export obligation was to be carried out within a certain stipulated period but the petitioners did not do so even till today and in view of this default on the part of the petitioners, relief should not be granted. Shri Parikh controverted the submission by pointing out that the petitioners were ready and willing to perform the export obligation, but are prevented from doing so for the failure of the Department to extend the period for fulfillment of the obligation. Shri Parikh expressed his willingness to fulfil the export obligation within a reasonable time from the date when the DEEC book is duly revalidated and extended by the respondents. In my judgment, it is necessary to give direction to the Department to revalidate and extend the DEEC book to enable the petitioners to export 82.250 Metric Tonnes of stainless steel spoons. Shri Shah submits that it is not clear as to whether the Bank guarantees furnished by the petitioners are still in force. It is obvious that the petitioners are duty bound to keep the Bank guarantee in force and the Department would revalidate and extend DEEC book only after being satisfied that the Bank guarantees are in operation. In case, the Bank guarantees are not in operation and proof of that is not furnished within 4 weeks from today to the satisfaction of the Department or in case the petitioners fail to is passed.

1. The impugned orders/communications which are Exhibits ''Q'' ''T'', ''V'', ''W'', ''FF'' and ''GG'' to the petition are hereby quashed.

2. It is hereby ordered that the petitioners are entitled to import 148 Metric tonnes of stainless steel with the benefit of duty exemption in respect of 131.6 Metric tonnes of stainless steel, under their Advance Licence dated 17/9/81 (Exhibit ''E'' to the Petition) on following conditions :

(a) The petitioners shall, within three months of the date when their DEEC book is duly revalidated and extended by the respondents and returned to the petitioners, export 82.850 m.t. of stainless steel spoon at current international prices, and report the discharge of the said export obligation within one month thereafter to the Import Control Authorities and the same be endorsed by the respondents on the DEEC book.

(b) The petitioners file in this Court within four weeks from today copies of Bank guarantee for Rs. 15,54,525/- and Rs. 10,00,000/- mentioned in the petition and such guarantee to remain in force for one year from today. DEEC book to be revalidated only after compliance with this clause.

(c) If the petitioners do not discharge their export obligation or fail to comply with clause (b) as provided hereinabove, it would be open to the Import Control Authorities to take action against the petitioners in accordance with law and to enforce Bank guarantees and the bond.

6. No order as to costs.