
(1987) 01 BOM CK 0001

In the Bombay High Court

Case No : Writ Petition No. 2173 of 1985

Sunil Jugalkishore Gupta

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 13-01-1987

Acts Referred:

Customs Act, 1962 — Section 59, 59(3), 61, 67, 68

Citation : (1987) 14 ECC 165 : (1988) 36 ELT 75

Hon'ble Judges : S.M. Daud, J

Bench : Single Bench

Judgement

1. Petitioner doing business in the name and style of M/s. Sunil Sundeep Combines invokes article 226 of the Constitution to quash orders set out in Exhibits "P", "M" and "L" and seeks a direction to the respondents to permit him to sell and/or transfer the goods figuring in the petition vide proviso to Section 59(3) of the Customs Act, 1962 - hereinafter referred to as the "Act".

2. The points that arise for determination in this petition have to be considered in the background of the following :-

In the period July to September 1982, petitioner imported stainless steel sheets and circles as per the particulars given in para 3 of the petition. Petitioner filed two bills of entry for warehousing of the consignment as required by Section 59 of the Act. After the bills of entry had undergone the requisite scrutiny, the imported goods were stored at the public warehouse under bonds at Wadala, Bombay. The permitted warehousing was for a period of one year ending with 4.10.1983. On 27.12.1983, petitioner moved two applications covering the two consignments for an extension of the bond period by three months. The ground advanced was that petitioner, in view of fantail difficulties, was not in a position to pay the duty and clear the goods. These two applications are at Exhibits "C-1" and "C-2". His financial difficulties not apparently having abated, petitioner entered into a transaction with M/s. Lalit Stainless Steel (India) Ltd., Kandla Free Trade Zone, Gandhidham. On 1.1.1985, the said Lalit Ltd. and petitioner moved

an application seeking permission to effect a sale and/or transfer from the petitioner upto the Lalit Ltd. This letter was addressed to the Assistant Collector of Customs, Kandla Free Trade Zone. The said Officer on 1.2.1985 accorded a "no objection" to the proposed transfer. Thereafter the shipping bills were presented to respondent no. 4 whose scrutinising officer on 15.3.1985 directed the submission of the original insurance policy and also that the bond period had to be got extended. On 25.3.1985, two applications for extending the bond period for six months were moved. On 30.3.1985 petitioner executed two bonds anticipating an extension for the duration applied for. Petitioner and M/s. Lalit Ltd. in June and July 1985 supplied particulars and executed documents as required for securing the order for extension of the bond period. On 12.8.1985, petitioner received Exhibit "L"'s original. This, for the first time, indicated the view of the authorities that transfer to a duty-free port was not permissible, that the bond period could not be extended as the applications for extension were given after the expiry of the period of warehousing and that the bonders, in terms of the demand notice, had lost all privileges available under Chapter 9 of the Act. Accompanying Exhibit "L" was the detention notice u/s 72 of the Act and marked Exhibit "M". Petitioner made a representation protesting against the action taken and this representation was addressed to the Central Board of Excise & Customs. As the powers of the Board had been delegated to respondent no. 3, the said representation was transferred upto him for consideration and disposal. Respondent no. 3 on 16.10.1985 rejected the representation vide the original of Exhibit "P".

3. It is petitioners contention that the respondents were in error in refusing to extend the duration of the bond and to refuse permission to effect a transfer in favour of Lalit Ltd. as desired by him. Hence this petition for the quashing of Exhibits "L", "M" and "P" and for a direction to the respondents to allow the petitioner to effect an inter-bond transfer of the goods in question to Lalit Ltd. within eight weeks from the date of the disposal of the present petition.

4. Respondents have raised various defences through two affidavits filed by the present holder of the office of respondent no. 4. Briefly stated the defences are :-

(i) Applications dated 27.12.1983 for an extension of the bonding period was not maintainable as these had come after the expiry of the warehousing period of one year. It could have been different if the extension had been applied for during the warehousing period permitted initially.

(ii) Petitioner had failed to produce an insurance cover for the goods which during the warehousing period were to lie in a bonded space.

(iii) The goods having been imported for home consumption, could not be bonded for a more than reasonable time. The bonding was meant essentially to enable the deferred payment of customs duty and not escape the same altogether by transfer of goods to an importer in a duty-free port like Kandla.

(iv) Petitioner had no locus standi to complain about the refusal to permit the

transfer as the concerned party was Lalit Ltd. in whose favour a conditional offer had been made.

These defences are considered below :-

5. I will first address myself to the contention that petitioner has no locus standi to complain inasmuch as the affected party was Lalit Ltd. It is surprising that a plea of this nature has been raised by the respondents. Counsel representing them points to Exhibits "F" being addressed only to Lalit Ltd. Exhibit "F" is the "no objection" to the transfer of the goods figuring in this case from the petitioner to Lalit Ltd. But the application for effecting the transfer was made by the petitioner as also Lalit Ltd. This is clear from the copies of the applications at Exhibits "E-1" and "E-2". While the subject was being thrashed out between the parties, never was an objection raised about the eligibility of the petitioner to make a grievance. In fact, petitioner's grievance at Exhibit "N" was entertained and passed on to respondent No. 3 for consideration. The rejection of that representation was communicated to the petitioner vide Exhibit "P". In the face of this overwhelming indication that petitioner had applied for a bond-to-bond transfer and that he was accepted as being very much concerned in the matter, respondents are estopped from contending that he has no locus standi to complain against the action taken by them. More need not be said on this aspect of the case.

6. This brings me to the defence much emphasised on behalf of the respondents. It is contended that the applications for extending the bond period were preferred on 27.12.1983, i.e., after the expiry of the permitted bounding up to 4.10.1983. The law, it is said, does not permit the entertaining of such an application. To decide this question we will have to turn to Section 61 of the Act. The portion therefrom relevant for a determination of the question read thus :-

Any warehoused goods may be left in the warehouse in which they are deposited or in any warehouse to which they may be removed -

(a) in the case of non-consumable stores, till the expiry of one year; and

(b) in the case of any other goods provided that

(ii) in the case of any goods which are not likely to deteriorate, the aforesaid period of one year... may on sufficient cause being shown, be extended by the Collector of Customs for a period not exceeding six months and by the Board for such further period as it may deem fit."

There is nothing in Section 61 to indicate that the application for extension must be made before the expiry of the period of warehousing initially permitted. Counsel refers to the scheme of Chapter IX in support of the contention that the application for extension must come before the expiry of the permitted bonding period. It is true that after the expiry of the warehousing period, the authorities are at liberty to take coercive steps to recover the withheld customs duty and other charges. But when the second proviso empowers the Collector and the

Board to give extension for a further period of warehousing, a different intention seems to be indicated. Read reasonably, it would appear that unless the authorities have taken recourse to coercive measures to recover customs duty and warehousing or other charges, the authorities are under an obligation to consider the application for extension despite the same having been preferred after the expiry of the permitted warehousing period. It was contended that on 30.3.1985, an order refusing to extend the warehousing period had been passed. Petitioner denied the service of any such order upon him. Respondent No. 4 in his supplementary affidavit merely says that the refusal was sent for communication to the petitioner and not that it was in fact communicated. The stand taken by the petitioner is consistent with the subsequent steps taken by him and the proposed transferee Lalit Ltd. Both of them in June and July 1985 executed different documents, which could only have been on assumption that they anticipated acceptance of the proposed transfer. Therefore, even if it is assumed that the order of refusal was passed on 30.3.1985, it was not communicated to the petitioner. Mr. Ganesh relies upon various authorities in support of his submission that an application for extension could be entertained even after the expiry of initial bonding period. It is not necessary to refer to these cases for the language of the section extracted above, in particular the second proviso, leaves no room for doubt that no limitation as to when the extension should be applied for can be read in to the section. That, coupled with the admitted position, that steps had not been taken to recover customs duty or the warehousing charges, indicates that the power to grant an extension had not to come to an end. That apart, the initial response of the authorities to the extension applications was different. They did not reject the applications outright. What they required to be done was that the bond period be got extended. This was so endorsed on the applications, copies whereof, are at Exhibits "G-1" and "G-2".

7. There is then the contention that the applied for bond-to-bond transfer was not permissible because dutiable articles were sought to be passed on to an importer to import through a duty-free port. Reliance is placed upon the terms of a notification bearing No. 77 of 1980 as amended by Notification No. 99 of 1980. No provision of law has been brought to support this plea. In fact, the Assistant Collector of Customs, Kandla Free Trade Zone had given his "no objection" to the proposed transfer. Sections 67, 68 and 69 of the Act do not make it incumbent on an importer of dutiable goods to effect a bond-to-bond transfer, only in favour of an importer importing the goods through a non-free trade Zone. Section 67 in fact permits the owner of any warehoused goods to remove them from one warehouse to another without payment of duty, subject to such conditions as may be prescribed. The "no objection" initially granted to the proposed transfer provided for only one condition viz., that petitioner had to take permission from the Bombay Customs House. This permission was applied for and the two conditions laid down were that petitioner extended. The first reason was not of any substance and this is clear from Exhibit "L" where it is not cited as a ground

for the rejection. Insofar as the second reason is concerned, the refusal to extend the bonding period was the creation of the respondents themselves. Petitioner was compelled to take recourse to warehousing because of circumstances beyond his control. The import duty had been raised threefold and the domestic market in stainless steel, had crashed. He had applied for warehousing, and, that is a facility permissible under the Act. In fact, the respondents initially did not have any objection to the grant of the request made by the petitioner and Lalit Ltd. The reasons given at a later stage by them for not permitting the transfer, did not have the sanction of law. The result, therefore, is that the petition will have to be allowed. Hence the order.

8. Orders embodied in Exhibits "P", "M" and "L" are hereby quashed Respondents are hereby directed to allow petitioner to effect an interbond transfer of the goods as per prayer clause (b)(v) of the petition. Respondents to bear their own costs and pay those incurred by the petitioner. Rule in the above terms made absolute.