
(1993) 10 MAD CK 0036
In the Madras High Court
Case No : Writ Petition No. 16991 of 1993

Tata Tea Ltd.

APPELLANT

Vs

Collector of Customs, Madras

RESPONDENT

Date of Decision : 08-10-1993

Acts Referred:

Customs Act, 1962 — Section 25

Citation : (1994) 69 ELT 219

Hon'ble Judges : Kanakaraj, J

Bench : Single Bench

Advocate : Mr. Suresh Krishnamurthy, for the Appellant; Mr. C.A. Sundaram, Addl. Central Govt. Standing Counsel, for the Respondent

Judgement

Kanakaraj, J.

1. The petitioner is engaged in the growing, manufacture and sale of Tea including instant Tea Powder. The instant Tea Division has been exporting its entire production, to the general currency areas. For the purpose of this instant Tea Division the petitioner imported two Decanter machines from Germany in the year 1982. This import was on full payment of Customs duty and Additional duty. Taking advantage of a scheme announced by the Government of India, the petitioner applied to be recognised as 100% Export Oriented Units (hereinafter called EOU) and they were recognised by an order dated Nil, June 1992. The said recognition enables the petitioner to get exemption from payment of Customs duty and Additional duty in respect of their imports to the tune of 300 lakhs rupees. But it must be noticed here that the two Decanter machines were imported prior to the said recognition. However, after the said recognition in June, 1992, the said two Decanter machines developed certain

functional difficulties. The repairs could not be undertaken in India and the petitioners sought for permission from the Director General of Technical

Development to send back the machines to the manufacturer at Germany, to get them repaired and re-imported the same for further use by the

petitioner. The permission was granted on 12-4-1991. The defective machines were exported in October, 1992 under a Bill of Lading dated 15-

10-1992. The machines duly repaired were re-imported in May, 1993 through the Madras Port. The bill of entry for Home Consumption was filed

on 12-7-1993 declaring the value as Rs. 18,06,017/-. The petitioner was of the impression that the goods can be re-imported without payment of

any duty because of their recognition as a hundred per cent "EOU". The petitioner took up the matter with the Development Commissioner and

the latter by an order dated 6-8-1993 was pleased to permit the petitioner to effect the aforesaid re-importation against the sanctioned limit of Rs.

3 crores. By a letter dated 12-8-1993, the petitioner sought for release of the goods claiming exemption from Customs duty. The third respondent

has made an endorsement to the effect that free import cannot be permitted since the machines themselves were originally imported by the

petitioner before they got a declaration as a hundred per cent EOU. According to the petitioner, the stand of the third respondent is contrary to

law and therefore, he is seeking the issue of a Writ of Certiorarified Mandamus to quash the endorsement dated 14-8-1993 and direct the

respondents to release the goods free of import duty.

2. In view of the urgency of the matter Mr. C.A. Sundaram, learned counsel for the respondents has opted to argue the matter on the basis of the

available records, without filing a counter-affidavit. According to the respondents, the stand taken in the endorsement is perfectly valid and in

accordance with law. Mr. C.A. Sundaram lays emphasis on the fact that the machines (two Decanters) were imported in the year 1982 long

before the introduction of EOU Scheme and long before the petitioner was registered as an EOU in June, 1992. At the time of the application for

seeking permission to export machines for the purpose of repairs and to have the same re-imported into India, the petitioner was only

contemplating the benefit of the Notification 159 issued u/s 25(1) of the Customs Act. Even when the goods re-imported in May, 1993 and the Bill

of Entry was filed on 12-7-1993, the petitioner was only contemplating the benefit of the Notification 159 issued u/s 25(1) of the Customs Act. It

is only on 22-7- 1993 that the petitioner addressed a letter to the Development Commissioner seeking his advice on the total exemption from

Customs duty in respect of the re-import of the machines. In this letter it was claimed that the petitioners had been allowed to import capital goods

worth Rs. 3 crores as per the order of recognition in June, 1992. They claimed that they had imported the goods worth about Rs. 225 lakhs

leaving a balance of Rs. 75 lakhs. They wanted clarification as to whether they could utilise the balance of Rs. 75 lakhs against the repair charges

which was worth about Rs. 40 lakhs. The Development Commissioner by his letter dated 6-8-1993 permitted the petitioner to incur the payment

of Rs. 41.16 lakhs, being the repair charges against the total sanction of Rs. 300 lakhs for the import of capital goods as per the letter dated 9-6-

1992. They also made it clear that the original letter of permission shall stand amended to that extent. Argues Mr. C.A. Sundaram, that the said

permission has nothing to do with the levy of Customs duty for which respondents alone are the proper authorities. Mr. Sundaram then refers to

the Export Import Policy for the period 1-4-1993 to 31-3-1997. Clause 118 is as follows :

Existing DTA units may also apply for conversion into an EOU but no concession in duties and taxes would be available under the scheme for

plant, machinery and equipment already installed.

The emphasis is on the words that no concession in duties would be available under the scheme for plant, machinery and equipment already

installed. If the goods are taken as the import of second-hand goods, Clause 24 and 26 of the Export and Import Policy stand in the way and

require a licence. It is not pretended that any such licence was issued. He then refers to the two notifications namely, 159 and 127. In fact, the

only question is whether which of the said notifications apply to the instant case. There is no difficulty for the petitioner to claim exemption under

the General Exemption Notification 159 above- referred to. Coming now to the General Exemption No. 127 it says that the Central Government

exempts goods specified in the Table annexed, when imported into India for the purpose of manufacture of articles for export out of India, by a

hundred per cent EOU approved, from the whole of the duty of Customs leviable thereon and the additional duty leviable under the amended Act.

The argument of Mr. C.A. Sundaram is that the intention of the Government in making the said Notification 127 is to permit the import of goods by

hundred per cent EOU, so that there could be more exports, thus building up the economy of the country. He therefore, links an EOU with Clause

118 of the Export Policy quoted by me earlier. In other words, the benefit of Notification 127 cannot apply to the machines imported and installed

in the year 1982. The very object of giving an exemption under Notification 127 will be lost if such imported machineries are allowed to claim

exemption. Reference is also made to the Hand Book of Procedures and in particular to Clause 159 in Chapter IX. This clause is by way of

explaining Clause 118 of the Export and Import Policy. It is worthwhile to notice this clause also.

159 Conversion of an existing Domestic Tariff Area (DTA) unit into an EOU may also be permitted. For this purpose, the DTA unit may apply to

the Secretariat for Industrial Approvals, in the same manner as applicable to new units. No concession in duties and taxes shall, however, be

available under the scheme for plant, machinery equipment already installed.

3. I accept the argument of the learned counsel for the respondents based on the Clause 118 of the Export and Import Policy and 159 of the Hand

Book of Procedures and hold that the benefit of Notification 127 cannot apply to the instant case where the petitioner is seeking to re-import

machineries installed long before the introduction of EOU scheme and which have become damaged requiring repairs abroad, after the introduction

of the scheme. It is rightly pointed out that the permission granted by the Development Commissioner on 6-8-1993 will not and cannot entitle the

petitioner from claiming exemption of duty. It is also pointed out by the learned counsel for the respondents that the impugned endorsement is

capable of being challenged in a regularly filed appeal under the Customs Act. That right is reserved. Therefore, it would not be proper to direct

the release of the goods at this stage, giving the benefit of Notification 127. Consequently, the Write Petition fails and is dismissed. There will

however, be no order as to costs.