
(2001) 12 KL CK 0056
In the High Court Of Kerala
Case No : O.P. No. 30628 of 1999

Tata Tea Ltd.

APPELLANT

Vs

Director General of Foreign Trade

RESPONDENT

Date of Decision : 04-12-2001

Acts Referred:

Customs Act, 1962 — Section 129A(1)

Citation : (2002) 81 ECC 689

Hon'ble Judges : M. Ramachandran, J

Bench : Single Bench

Advocate : Joseph Kodianthara and Thomas Vellapally, for the Appellant; P.S. Sreedharan Pillai, for the Respondent

Final Decision : Dismissed

Judgement

M. Ramachandran, J.—The eligibility for Customs Duty concessions admissible under EXIM Policies in the matter of imports made by the petitioner is the issue highlighted in this Writ Petition.

2. The petitioner has challenged Ext. P3 letter dated 25.4.1991 issued by the Controller of Imports & Exports, New Delhi the text of which may be extracted herein:

"With reference to your application No. BDL/1010/90 dated 20.12.1991 you are hereby informed that your application was considered by Export Promotion Capital Goods Committee carefully but the same could not be approved due to indigenous angle. As such your application is hereby rejected and you may approach indigenous suppliers for meeting your requirements....". The names of suppliers were also given. Petitioner has also included a prayer for keeping Ext. P11, an appeal filed by them before the Appellate Tribunal u/s 129A(1) of the Customs Act, 1962, in abeyance, during pendency of this Writ Petition. Sri. Joseph Kodianthara, learned counsel for the petitioner, submitted that if an appropriate direction is issued to the Director General of Foreign Trade (Ist

respondent herein) to take up the representations, that are pending, the petitioner will pursue remedies there. But this was opposed by the respondents. However, innocuous the prayer might appear to be, to inject life in the form of adjudication to the alleged legal rights of the petitioner, at this distance of time, does also appear to be inexpedient. The essential issue concerns interference in policy matters, and this is also a circumstance against the petitioner's submissions. Before disposing of the Original Petition, I may briefly state the background of the case projected.

3. The petitioner, a public limited company is engaged as well in the business of manufacturing instant tea, which is 100% an export oriented activity. Their case is that the plant erected and in existence were becoming obsolete and it was found that additional machineries (centrifuges) were expeditiously required be installed in the factory so as to cope up with the future demands which were in the horizon. With this objective, Ext. P1 had been submitted by the petitioner on 20.12.1990 before the Chief Controller of Imports and Exports and request had been made that concessional duty as envisaged under paragraph 197 of the Import-Export Policy, as was prevalent then, may be made available. Of course, during the relevant period, the import of capital goods up to a maximum CIF value of Rs. 10 crores were permitted at concessional rate of Customs Duty of 25% of the value. Such application were to be considered by an inter-ministerial Committee, when requests came from registered manufacturer-exporters, who had minimum prescribed eligibility. An undertaking was also to be given that thrice the amount of foreign exchange expended had to be recouped within a stipulated period so as to replenish the expenditure. As referred to earlier, the application filed by the petitioner did not find favour with the Department, though recommended by the Development Officers, situated at Cochin and Ext. P3 came to be issued in the aforesaid context. It was pointed out that as the items were indigenously manufactured, it may not be possible to permit an import.

4. The case of the petitioner is that though they had contacted the parties referred to in Ext. P3, there was only an offer for arranging the equipments on import basis by M/s. U. Alfa Laval. As far as the other concern, M/s. Anup Engineering, they informed the petitioner that it may not be possible for them to manufacture and supply the items in their present circumstances. It is not in dispute that the petitioner had imported the sophisticated machinery items by using their REP licence, of course so as to meet their pressing needs. The petitioner did not get the concessions arising out of the EXIM Policy.

5. Normally the matter would have ended there, but the petitioner apparently was sore about the issue and had taken the matter with the Chief Controller of Exports and Imports. A demand was put up that the import made by them should be presumed as one made under the EXIM Policy and as a consequence they were to be considered as entitled to the concession spoken to by paragraph 197. Averments show that the petitioner had applied for a refund, since because

of the rupee devaluation in the meanwhile, a substantial sum happened to be invested for importing the machineries. It is stated that about Rs. 114.11 lakhs, instead of the original estimated amount of Rs. 70.95 lakhs became the expenditure. The delay in disposing of the application for import, and the error in rejecting the request, according to them, justified in such a compensatory measure. The application was rejected and the petitioner filed an appeal before the Collector of Customs (Appeals). Bombay. This also was rejected and it was in the above context that an appeal to the Tribunal had been filed as Ext. P11.

6. From the correspondence produced, it is seen that the petitioner was not optimistic about or success of the appeal and in the meanwhile they again addressed the Director General to consider the representations pending appeal. In the meanwhile an Original Petition had also been filed by them as O.P. No. 25508 of 1999, but later withdrawn. When the application was refused to be entertained, the pursuit is taken up with renewed vigor.

7. I had heard Sri. P. Gopinath, appearing on behalf of the Central Government Standing Counsel. He relied on the counter affidavit filed by the Deputy Director. The stand taken is that the application originally filed had been considered and rejected by the Committee in 1991 and as there was no disput/case against the rejection of the application pending in any court, the original file relating to this case has also been weeded out and destroyed in accordance with the Government instructions in this regard, and there is nothing now presently capable of being considered or decided. The collateral claim according to him, is misconceived.

8. The issue thus is whether it is necessary or permissible for this Court to entertain the claims urged. The petitioner harped on the profuse administrative blocks that stood in the way of their availing the benefits normally admissible to established exporters. The corresponding debacle in which they were subsequently place was the creation of Administration, according to them. The Petitioner urged that Ext. P3 was sinister as it ultimately turned out to be. It was not a case where they were ineligible to get the benefit of the EXIM Policy, but the counsel asserts that there was inept handling. Perhaps the petitioner may be justified in contending that this ultimately resulted arbitrariness. They might have also suffered a loss or could not make a profit as originally envisaged. But the projected casual connection, according to me, ends there. It is not sufficient to build a claim on such foundation. The circumstances indeed show that the respondents had not erred in their approach as it had not been substantially established that there was no possibility of indigenously securing the centrifuges. For some reason or other, the petitioner was not successful in getting the sophisticated machinery at the time of their need. But for that reason the administration cannot be faulted.

9. It is not as if every grievances could be redressed by legal proceedings. In fiscal matters, the court cannot go beyond the text of the statute/policy. At best, there was only a statutory right, of course circumscribed by preconditions, and it

cannot be mistake for a common law right or for concessions never envisaged. The import admittedly was not in furtherance of the EXIM Policy. The petitioner was also not saddled with obligation for export mandated by the policy. The EXIM Policy admittedly was operating only for a specified period. Above all, it may not possible to contend that a deliberate attempt was made so as to prejudice the petitioner; there was no animus nocendi alleged on the part of the administration. As pointed out by the Government, in the absence of challenge, the relevant files had been closed. In these circumstances, I find no legal backing for agitating any such claims and it is fact amounts to misadventure. Consequently, the Original Petition is dismissed. There will be no order as to costs.