(2012) 02 BOM CK 0017

In the Bombay High Court

Case No : Writ Petition No. 1534 of 2012

Team Aviation India Pvt. Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 29-02-2012

Acts Referred:
Customs Act, 1962 — Section 58, 61, 61(1), 69, 72(1)

Citation : (2013) 287 ELT 36

Hon'ble Judges : M.S. Sanklecha, J;D.Y. Chandrachud, J

Bench : Division Bench

Advocate : Prakash Shah with Jas Sanghavi and Durgaprasad Poojari, instructed by PDS Legal, for the Appellant; Pradeep S. Jetly, for the Respondent

Judgement

1. The Petitioner was granted a licence on 6 June 2008 u/s 58 of the Customs Act, 1962 to operate a Private Bonded Warehouse for storage of imported goods, namely, Aircraft Parts, Aviation Parts, Oils, Lubes etc. The licence was valid initially for a period of one year and was thereafter extended upto 5 June 2011. The licence has not thereafter been renewed since the Petitioner did not apply for renewal. Between June 2008 and May 2011, the Petitioner imported aviation parts which were warehoused in its Private Bonded Warehouse without the payment of duty after filing in-bond Bills of Entry. The Petitioner executed bonds in respect of thirteen such consignments which have been set out in paragraph 6 of the Petition. It has been stated that the goods covered by the bonds belong to Dassault Aviation, France and were imported for stock and sale to the Indian owners of Dassault Aircraft coming into or transiting through India.

2. By a letter dated 26 April 2011, the Petitioner sought an extension of the bond period in respect of seven bonds. The application was rejected by the Chief Commissioner of Customs, Mumbai-III and intimated to the Petitioner by a communication dated 20 June 2011 of the Assistant Commissioner of Customs. The letter states that the Chief Commissioner has rejected the application for extension of the bond period on the ground that (i) The application had been

submitted much after the expiry of the warehousing period; and (ii) No valid reasons or exceptional circumstances warranting extension were brought on the record. The Petitioner was, therefore, called upon to pay duty and interest along with penalty and other charges. Thereafter, by a letter dated 24 August 2011, the Petitioner applied to the Deputy Commissioner of Customs, to remove the goods from its Private Bonded Warehouse to be exported to an SEZ at Chennai. By a reply dated 11 October 2011, the Deputy Commissioner of Customs, directed the Petitioner to submit Annexure-4 duly certified by the Superintendent Incharge at the earliest so that the request for transfer of the consignment to Chennai would be processed. The Petitioner complied with the request on 13 October 2011. The Deputy Commissioner of Customs, has by a communication dated 23 January 2012, rejected the request on the ground that the request for extension of the warehousing period of the bonds was rejected by the Chief Commissioner of Customs. Accordingly, these proceedings have been instituted.

3. The challenge is to the communications dated 20 June 2011 and 23 January 2012. A direction has been sought to allow the Petitioner to transfer the goods covered under eight bonds to an SEZ at Chennai.

4. In the affidavit in reply filed by the Deputy Commissioner of Customs, it has been stated that of the eight bonds in respect of which the dispute now survives, the Petitioner cleared a part of the consignments covered by the bonds at Sr. Nos. 1, 2 and 3 within the initial warehousing period. After the completion of the warehousing period of one year, the period was extended six times for the bond at Sr. No. 1 and three times for Sr. No. 2. The period was extended once for the bonds at Sr. Nos. 3, 4, 5 and 6. As the warehousing period expired, demand notices were issued u/s 72(1). It has been stated that the request for extension of the bond period was rejected by the Chief Commissioner. In the present case, it has been submitted that while the Petitioner has sought permission to re-export the goods and submitted an export invoice and home consumption Bill of Entry, duly assessed by the SEZ authority, a peculiar situation has arisen since the warehousing licence issued u/s 58 has expired on 5 June 2011, leaving no scope for permitting the extension of warehousing period. Moreover, it has been submitted that the request for warehousing cannot be accepted indefinitely.

5. u/s 61(1) of the Customs Act, 1962 any warehoused goods may be left in the warehouse where they have been deposited for the period stipulated therein. Under the proviso, the Commissioner has been empowered to extend the period for such periods as he may deem fit in the case of goods intended for use in any hundred per cent export oriented undertaking. In any other case, the Commissioner may extend the period by a period not exceeding six months while the Chief Commissioner may do so for such further period as he may deem fit.

6. On a perusal of the record, it would appear that the licence which was granted to the Petitioner to operate a Private Bonded Warehouse expired on 5 June 2011, after which no renewal has been granted. The request of the Petitioner for extension of the bonds which were executed in respect of imported goods was

rejected on the ground that the application for extension of the warehousing period was submitted much after the expiry of the warehousing period and no valid reasons were shown. The subsequent order which has been communicated to the Petitioner on 23 January 2012 is essentially consequential upon the first. The decision which has been communicated to the Petitioner on 20 June 2011 has been arrived at without furnishing to the Petitioner an opportunity of being heard. That decision involved civil consequences since the letter indicated that the Petitioner has to pay duty, interest and penalty. The Petitioner has relied upon the circular issued by the Central Board of Excise and Customs on 14 January 2003 which states that in the event that an importer makes a request to permit re-export of the goods u/s 69, such a request may be allowed even if the permitted period for bonding has expired and a demand notice has been issued or it has been decided to put the goods under auction. Before permitting re-export in each such case, however, it will be necessary to extend the period of warehousing u/s 61 to enable the importer to export goods within the permitted period of warehousing. On behalf of the Petitioner it has also been submitted that in the case of five out of thirteen bonds, which are referred to in a chart annexed at paragraph 6 of the Petition, re-export was permitted in September 2011 when the Bill of Entry for home consumption has been filed. However, in the affidavit in reply, it has been stated that the goods covered by the five Bills of Entry were allowed to be transferred to the SEZ at Chennai u/s 61 read with the ASZ Rules as they were within the warehousing period. Since we are inclined to set aside the order of the Chief Commissioner, which has been communicated to the Petitioner on 20 June 2011, on the ground that the Petitioner has not been heard, it is not necessary for this Court to express any view on the merits of the entitlement of the Petitioner. We accordingly allow the Petition by setting aside the order of the Chief Commissioner as reflected in the communication dated 20 June 2011 of the Assistant Commissioner of Customs (Exhibit-E)- and the consequential order which has been passed on 23 January 2012 (Exhibit-K). We direct that the Chief Commissioner shall pass a fresh order in accordance with law, after furnishing to the Petitioner an opportunity of being heard. Since the subject matter of the dispute now survives in respect of eight bonds, the competent authority shall pass orders in respect thereof. The Petition is accordingly disposed of. There shall be no order as to costs.