(2000) 06 MAD CK 0015

In the Madras High Court

Case No : Writ Petition No. 20161 of 1992 and WMP No. 4210 of 1996

T.I. Miller APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 05-06-2000

Acts Referred:
Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 27

Citation : (2001) 73 ECC 36 : (2000) 121 ELT 24

Hon'ble Judges : Y. Venkatachalam, J

Bench : Single Bench

Advocate : Arvind P. Datar, for the Appellant; G. Veerapathran, ACGSC, for the Respondent

Final Decision : Dismissed

Judgement

Y. Venkatachalam, J.—Invoking Article 226 of the Constitution of India, the petitioner herein has filed the present writ petition seeking for a

Writ of Mandamus to direct the third respondent herein to grant exemption under notification No. 67/83-C.E., dated 1-3-83 to the bulbs imported

vide Bill of entry No. 47925/4-1-91 to the petitioner herein and consequently to direct the third respondent to refund the sum of Rs. 1,54,980/-

being the amount of duty deposited by the petitioner and to pass such further or other orders as this Court may deem fit in the facts and

circumstances of the case.

2. In support of the writ petition, the petitioner herein has filed an affidavit wherein he has narrated all the facts and circumstances that forced him

to file the present writ petition and requested this court to allow the writ petition as prayed for. Per contra, on behalf of the respondent a counter affidavit has been filed rebutting all the material allegations levelled against them one after the other and ultimately they have requested this court to

dismiss the writ petition for want of merits.

3. Heard the arguments advanced by the learned counsel appearing for the respective parties. I have perused the contents of the affidavit and the

counter affidavit together with all other relevant material documents available on record in the form of typed set of papers. I have also taken into

consideration the various points raised by the learned counsel appearing for the respective parties during the course of their arguments.

4. In the above facts and circumstances of the case, the only point that arises for consideration is, as to whether there are any valid grounds to

allow this writ petition or not.

5. The brief facts of the case of the petitioner as seen from the affidavit are as follows : The petitioner is manufacturing bicyle dynamo lamps. It had

prepared its drawings and entered into a contract with a manufacturer at Taiwan for the supply of vaccum gas filled bulbs of 12 volts, 6 watts to be

used in the cycle dynamo lamps. The dimensions of the bulb was that the length would be 42 mm and the diameter 90 mm. The bulbs are subject

to basic customs duty of 100% auxiliary duty of 50% and countervailing duty at the rate prevailing under the Central Excise Tariff Act, 1985, read

with any notification as applicable. The bulbs came under the heading 85.39 and the relevant excise tariff entry reads as follows :

85.39 8539.00 Electric filament or discharge 35% plus Rs.

lamps including sealed beam 10/- per

lamp units and ultras violet or lamp.

infra, red lamps; arc lamps

By exemption notification No. 67/83-C.E., dated 1-3-1983, as amended, different types of bulbs are entitled to concessional rate of duty. The

goods imported by the petitioner come under serial No. 4 of this notification, and are chargeable to ''nil'' rate of duty. Under this notification

explanation I defines the expression ""miniature bulbs"" and explanation II states that to determine the classification and nomenclature of the bulb or

the wattage, length or diameter, as well as in respect of the procedure for testing, the provisions of Indian Standard Specification shall be adopted.

According to the petitioner, under the terms of the notification, the bulbs manufactured at Taiwan and imported into India, would be completely

exempt from countervailing duty as the excise duty leviable is nil. On the basis of the above, the petitioner had imported two consignments of such

bulbs vide bills of entry No. XD 1334 dated 24-7-1990 having the value of Rs. 24,667/- and XD 521, dated 10-9-1990 having the value of Rs.

49,772/-. The goods under these two bills of entry were cleared by the third respondent and no CVD was charged in terms of the exemption

notification mentioned above. The petitioner had Imported a further consignment of 50,000 bulbs having a value of Rs. 1,30,518/- vide a bill of

entry No. 47925 dated 4-1-91. The third respondent took the stand that the bulbs would not be eligible for exemption under notification No.

67/83-C.E., dated 1-8-1983 and on the ground that the explanation to the said notification referred to Indian Standard Specifications which would

not apply to imported goods. Thereafter they filed a W.P. before this court and as directed by this court the petitioner preferred an appeal to the

Collector of Customs (Appeals) Madras, claiming exemption under the said notification. The Collector allowed the appeal stating that even

imported goods would be entitled for the benefit of the notification. However, he observed that the petitioner should establish that they satisfied the

criteria under explanation II attached to the notification 67/83. He further held that if S.No. 4 is not applicable, the goods would be still covered by

S.No. 10 of the Table which forms part of the said notification. Further according to him for the purpose of determining whether a particular bulb

was covered under the table specified under notification, the definition as well as the procedure prescribed in the Indian Standard Specification has

to be adopted. It is also his case that ISI has given definition/specification only in respect of vaccum/bulbs for automobile use and flash lights and

there is no ISI specification for bulbs of less than 25 watts. Consequently in respect of bulbs imported by the petitioner, there is no prescribed

definition or procedure for testing by the Indian Standard Specifications, in the absence of any such specification, according to the petitioner the

entry in the table has to be made applicable and that therefore the bulbs imported by the petitioner do not fall under entries 1,2 and 3 and would

therefore fall under entry 4 and liable to nil rate of duty. Therefore it is the case of the petitioner that despite the orders of the Collector (Appeals), the matter is still pending with the third respondent who is insisting upon furnishing of details from the Indian Standard Institution. After the appeal

was allowed by the Collector (Appeals), the petitioner made representations to the third respondent asking him to grant the benefit of the above

notification. The petitioner also requested that the bank guarantee should be released and the deposit of Rs. 1.55 lakhs should be released

forthwith. Despite repeated reminders the third respondent has not completed the adjudication. He has informed the petitioner orally that unless the

ISI specifications are furnished to him, he will be unable to grant the aforesaid exemption and release the bank guarantee/grant refund. The

petitioner has informed the third respondent several times that for dynamo bulbs which was imported by the petitioner, ISI authorities have not

prescribed any specification and hence it will be impossible for the petitioner to furnish such specifications. The petitioner has subsequently written

a letter to the Public Grievance Committee on 27-5-1992. Thereafter the Assistant Collector called for particulars vide his letter dated 7-7-1992

to which a reply was sent on 14-7-1992. Another reminder was sent on 10-9-1992 requesting for speedy disposal of the concerned file. The third

respondent continued to insistance on furnishing of ISI specification and such insistance of the third respondent for ISI specification is illegal and

hence this writ petition.

6. Per counter in the counter affidavit filed by the respondents inter alia it is contended by them that the petitioner had imported bicycle dynamo

bulbs Gas filled and sought clearance vide Bill of Entry No. 047925 dated 24-12-90 and sought benefit of Central Excise Notification No. 67/83

at Nil C.V.D. As the petitioner did not produce Bureau of Indian Standard Certificate as provided in that notification, and also as the notification

could not be applied to Imported goods, the benefit of Central Excise Notification 67/83 was not extended. Aggrieved by this order the petitioner

filed W.P. No. 800/91 and in obedience to an interim order of this court the goods were assessed to provisional duty with 25% cash deposit of

the disputed C.V. Duty and 75% Bank Guarantee for the balance. As per the further directions the petitioner appealed to the Collector (Appeals),

Madras. The Collector (Appeals) in his orders in File No. C3/34/91 dated 27-3-1991 held that the impugned goods are eligible for the benefit of

Central Excise Notification 67/83. The said orders were accepted by the respondent. Subsequently, the Bill of Entry was finally assessed and the

Bank guarantee was discharged. However, the cash deposit of 25% of the disputed C.V.D. Duty has been retained on the grounds of unjust

enrichment. The importers had only given the declaration to the effect that the incidence of duty paid by them have not been passed on to other

persons and have not produced any documentary evidence to support their claim as required u/s 27 of the Customs Act 1962 as amended by Act

40 & 55 of 1991. Therefore it is contended by the respondent that the averments and allegations in the affidavit filed in support of the writ petition

contrary to the above facts are hereby denied. Under these circumstances they pray that this court may dismiss the writ petition.

7. Having seen the entire material available on record and from the facts and circumstance of the case and also from the claims and counter claims

made by the rival parties, the question involved in this matter is whether the petitioner herein is entitled for the concession claims by him in the

excise duty for the bulbs imported by him. But the respondent took the stand that the bulbs in question imported herein would not be eligible for

exemption under notification No. 67/83-CE dated 1-8-1983 on the ground that the explanation to the said notification referred to Indian Standard

Specifications, which would not apply to imported goods. When W.P. No. 800/91 came to be filed by the petitioner herein to quash the impugned

order of the third respondent dated 10-1-91 and to direct the second and third respondents to clear the consignment, of the bulbs by granting

exemption from countervailing duty in terms of the above notification. By order dated 24-1-91 this court directed the clearance of the goods

subject to the following terms and conditions:

1. That the petitioner shall pay the basic and auxiliary duty as admitted;

2. That in respect of differential duty, the petitioner shall pay 25% of the same in cash and for the balance shall furnish a bank guarantee;

3. That the petitioner shall file an appeal within 30 days from the said date, in other respects the parties shall abide by the decision of the appeal.

Etc.,

As directed by this court the petitioner herein preferred an appeal to the Collector of Customs (Appeals) Madras, claiming exemption under the said notification. The Collector allowed the appeal stating that even imported goods would be entitled for the benefit of the notification. However,

he observed that the petitioner should establish that they satisfied the criteria under explanation II attached to the Notification 67/83. That being so,

it is the specific contention of the respondent herein that as the petitioner did not produce Bureau of Indian Standard Certificate as provided in that

notification, the benefit of Central Excise Notification 67/83 was not extended. Further according to the respondent the importers had only given

the declaration to the effect that the incident of duty paid by them have not been passed on to other persons and have not produced any

documentary evidence to support of their claim as required u/s 27 of the Customs Act 1962 as amended by Act 40 & 55 of 1991. That being so,

it is not the case of the petitioner herein that they have produced such documents and inspite of that the respondents are pressing for the entire

payment. In such circumstances the petitioners cannot claim that such insistence of the respondent is illegal. Because in this case the Collector of

Customs (Appeals) has clearly observed in the appeal that the petitioner should establish that they satisfied the criteria under explanation II

attached to the Notification 67/83. When admittedly that has not been done by the petitioner herein they have no case at all in this writ petition.

Thus I do not see any merit whatsoever in the various contentions raised by the petitioners in this writ petition.

8. Further in support of their case, the learned counsel appearing for the petitioner relies on the decision reported in Bhadrachalam Paperboards

Ltd. and Another Vs. The Government of Andhra Pradesh and Others, wherein it has been held that the appellant having consumed the goods for

manufacturing other goods in its factory, question of it passing on the tax liability to customers would not arise and the appellant declared entitled

for refund for the period commencing three years prior to the date of filing of the writ petition. That being so, on facts, the cases are different and

that therefore, the said decision is not in anyway helpful to the petitioner herein in advancing their case herein.

9. Therefore for all the aforesaid reasons and in the facts and circumstances of this case and also in view of my above discussions with regard to

the various aspects of this case and also in the light of the above decision relied on by the petitioner herein, I am of the clear view that the petitioner herein has failed to make out any case in his favour and that therefore there is no need for any interference with the action of the respondent

impugned in this writ petition. Thus the writ petition fails and the same is liable to be dismissed for want of merits.

10. In the result, the writ petition is dismissed. No costs. Consequently WMP. No. 4210 of 1996 also is dismissed.