

(1993) 06 CAL CK 0028
In the Calcutta High Court
Case No : Matter No. 384 of 1993

Union of India (UOI)

APPELLANT

Vs

Sancheti Food Products Ltd.

RESPONDENT

Date of Decision : 29-06-1993

Acts Referred:

Customs Act, 1962 — Section 130(1), 130(3), 27, 27(5)
Finance Act, 1988 — Section 78

Citation : (1994) 68 ELT 341

Hon'ble Judges : Nure Alam Chowdhury, J;Ajit K. Sengupta, J

Bench : Division Bench

Advocate : N.C. Roy Choudhury and Prantosh Mukherjee, for the Appellant;Pranab Kr. Dutta and Biswajit Mukherji, for the Respondent

Judgement

1. This appeal arises out of the order dated April 26, 1993 passed by the Court of the first instance directing the respondents therein to comply with the order dated 16-1-1992 passed by the Tribunal.
2. The question before the learned single Judge was whether the Customs Authorities can refuse to comply with the order of the Tribunal.
3. Briefly stated the facts are that the first respondent before us purchased three trawlers which had been confiscated. The said respondent paid the purchase price which also included an amount of Customs Duties. It was later found by the respondent that it was not liable to pay customs duty and accordingly the said respondent made an application for refund. The said application for refund was rejected by the Assistant Collector. The Collector (Appeals) dismissed the respondent's appeal. The Tribunal upheld the contention of the first respondent and directed the Customs Authorities to refund the amount of duty amounting to Rs. 6,81,923/- to the first respondent subject to their executing a personal bond of guarantee along with the surety to the effect that the three trawlers in question would not be broken up in future and in case they are broken up, the said respondent would pay back the said amount of duty immediately thereafter.

4. The Customs Department thereafter moved a reference application u/s 130(1) of the Customs Act, 1962 before the Tribunal. The said reference application was rejected on 9-9-1992. Thereafter an application u/s 130(3) of the Act was filed by the Customs Authorities. But the Customs Authorities did not make any payment in terms of the Tribunal's order dated 16-1-1992. Accordingly, the first respondent filed a writ application for a mandamus directing the Customs Authorities to comply with the said order of the Tribunal. The learned single Judge was of the view that the Tribunal's decision is binding upon the Customs Authorities and they are bound to carry out the directions of the Tribunal and the filing of a reference application u/s 130(3) of the Act does not act as a stay of the operation on the order of the Tribunal dated 16-1-1992. As indicated, this appeal has been preferred against the said judgment and order.

5. On the application made u/s 130(3) of the Customs Act, 1962 rule has been issued. The questions on which the rule has been issued are as follows :-

(i) Whether Clause 5 of the Section 27 of the Customs Act, applies to a claim for refund of any amount collected as duty of Customs made on the ground that the goods in respect of which such amount was collected were not leviable to such duty or were entitled to exemption from duty?

(ii) Whether in view of the fact that the parties can file a claim whose duty has been assessed by the Officers of Customs that duty was not leviable or the party is entitled to duty exemption, and that an order of assessment is required to be made by the officers of customs, and in the facts and in the circumstances of the case, the observation/finding of the Tribunal that there was no order of assessment, and the claim comes within the purview of Section 27(5) of the Customs Act, is based on a wrong interpretation of Clause 5 of Section 27 of the Customs Act?

(iii) Whether in view of the fact that Clause 5 of Section 27 which was inserted by Section 78 of the Finance Act, 1988 (26 of 1988) with effect from 13-5-1988 and that the Respondent Sancheti Food Products Ltd., made an application for refund of duty in 1987, when this provision was not in existence, the Tribunal erred in holding that the said Section is applicable to the said claim?

The said Rule has been made absolute by the order made in the said application u/s 130(3) of the Act. The only question which arises at this stage is with regard to the refund of the amount as directed by the Tribunal. It cannot be disputed, nor has it been disputed, that the decision of the Tribunal is binding upon the Customs Officers and they are bound to carry out the directions of the Tribunal. The filing of reference application u/s 130(3) of the Act cannot be taken to be a stay of the order of the Tribunal. There is no provision/of giving stay to the operation of the order passed by the Tribunal during the pendency of the reference. However, since the appeal has been preferred by the Customs Authorities against the order of the learned Judge directing the Customs Authority to comply with the directions contained in the order of the Tribunal

dated 16-1-1992, we are of the view that interest of justice will be adequately met if the Customs Authorities are directed to deposit a sum of Rs. 6,81,923 /- with the Registrar, Original Side, within four weeks from date. The Registrar, Original Side shall deposit the same in a Savings Bank account of any Nationalised Bank. If, however, the respondent M/s. Sancheti Food Products Ltd. furnishes a bank guarantee in the like amount, that is Rs. 6,81,923/- to the satisfaction of the Registrar, Original Side within six weeks after such deposit, the Registrar, Original Side shall allow the respondent to withdraw the said amount to be deposited by the Customs Authorities. If no bank guarantee is furnished within six weeks, the Registrar, Original Side will invest the same in a fixed deposit for one year renewable from year to year until further order of the Reference Court in the pending reference.

6. We make it quite clear that irrespective of the result of the reference the first respondent will not be entitled to any interest from 16-1-1992 till the date of deposit by the Collector on the aforesaid amount of Rs. 6,81,923/-. In the event this order is not complied with by the Customs Authorities, the first respondent will be entitled to execute the order passed by the Tribunal dated 16-1-1992 as well as the Order under appeal and will also be entitled to interest at the rate of 18% from the date of the Tribunal's order till the date of payment. The first respondent instead of furnishing the bond as directed by the Tribunal's order will furnish bank guarantee in terms of this order.

7. To the extent indicated above, the order under appeal will stand modified.

8. No affidavit-in-opposition has been filed. Allegations made in the petition are not admitted by the first respondent.

9. Filing of paper book is dispensed with and undertaking is discharged.

10. All parties are to act on a signed Xerox copy of this dictated order upon usual undertaking.