(2000) 05 DEL CK 0040

In the Delhi High Court

Case No : CWP No. 1764 of 2000 and CM 2889 of 2000

Universal Enterprises APPELLANT

Vs

Commissioner of Customs (Appeals) and Others RESPONDENT

Date of Decision : 15-05-2000

Acts Referred:
Customs Act, 1962 — Section 128, 129E

Citation : (2000) 54 DRJ 400

Hon'ble Judges : Dr. Arijit Pasayat, C.J

Bench : Single Bench

Advocate : G.L. Rawal and Kuljeet Rawal, for the Appellant; Pinki Anand and Reema Khorana for Respondents 1 and 2, for the Respondent

Judgement

Arijit Pasayat, C.J.—The only question that needs adjudication in this writ petition is whether the Deputy Commissioner of Customs respondent No.2 was justified in seeking enforcement of the bank guarantees in respect of three orders passed under the Customs Act, 1962 (hereinafter referred to as the ''Act'').

2. A brief reference to the factual aspects as highlighted by the petitioner would suffice. Two bills of entry No.312146 and No.3''12147 were filed by the petitioner with the respondent No.2 on 23rd October, 1999 seeking clearance of certain goods. Show cause notice was issued in respect of the said bills of entry by the respondent No.2 on 19th November, 1999. Petitioner sought for certain information on 23rd November, 1999 in regard thereto. On 15th December, 1999 goods were cleared on provisional assessment basis against payment of Customs duty on furnishing of two bank guarantees of a total sum of Rs.1,94,287/- (Rs.96,354/- + Rs.97,933/-). Thereafter on different dates up to 28th January, 2000 ten bills of entry were filed. As in the earlier case, goods were cleared on provisional assessment basis on furnishing of a bank guarantee of Rs.l6,3l,805/-. Another show cause notice in relation to said ten bills of entry was is sued on 22nd March,2000. On 31st March, 2000 respondent No.2 confirmed the duty demand of Rs. 18,23,232/- and directed the enforcement of the bank guarantees

on the same day. On 6th April, 2000 petitioner filed three appeals u/s 128(1) of the Act along with applications for stay u/s 129-E of the Act before the Commissioner of Customs(Appeals), New Delhi- respondent No. 1. It was then noticed by the petitioner that in the meantime, respondent No.2 had sought for enforcement of the bank guarantees from the Indian Bank who had furnished the guarantees.

3. Placing reliance on Circular No.396/29/98-CX, dated 2nd June, 1998 learned counsel for the petitioner submitted that direction for enforcement of the bank guarantees is uncalled for. Learned counsel for respondents No.1 & 2 submitted that sometimes the currency of the bank guarantees expires necessitating enforcement of the guarantees when there is an adverse adjudication.

4. As noticed at the outset, the only question to be adjudicated at the present juncture is whether the direction for enforcement of the bank guarantees can be sustained in view of the Circular referred to above. The Circular in terms reads as follows

"Circular No.396/29/98-CX dated the 2nd June, 1998.

Realisation of Excise Dues - No coercive action till disposal of stay applications.

Subject : Central Excise- Whether coercive measure to recover duty demanded as a result of adjudication till such time as the appeal/stay application filed by the appellant has been disposed of by Commissioner(Appeals) be taken-Regarding.

1. On the question of recovery of dues during pendency of stay application before the Commissioner (Appeal), the matter was examined by the Board and necessary instructions were issued vide Circular No.23/90-CX.6 dated 12.12.1990 issued from F.No.209/107/89-CX.6 and Circular No.l6/92-CX.6 dated 12.11.1992 issued from F.No.208/59/92-CX.6. According to these instructions, Central Excise Officers were to allow a period of three months from the date of decision for payment of dues adjudicated before resorting to coercive measure to recover such dues. However, if the stay application is rejected by the Commissioner (Appeal) even before the lapse of time of three month, recovery proceedings should be initiated immediately. The Commissioner (Appeal) were also directed to dispose of stay application within the period of two months in case the Commissioner(Appeal) was not in a position to dispose of the main appeal within the same time frame.

2. Recently the Bombay High Court has ordered that Commissioner (Appeal) may be directed to dispose of stay application within the specified time limit and during the pendency of stay application no coercive action should be taken to realise the arrears of revenue.

3. Keeping the aforesaid in view, the Board has decided that no coercive action should be taken to realise the dues till the disposal of the stay application by the Commissioner(Appeal) and the Commissioner(Appeal) must dispose of the stay

application within one month of its filing."

5. There is no dispute and in our view rightly that the Circular has a binding effect. In Collector of Central Excise, Patna Vs. Usha Martin Industries, etc., he Apex Court observed that the departmental circulars are binding on revenue authorities. It was observed, inter alia, as follows :

"21. Through a catena of decisions this Court has pronounced that Revenue cannot be permitted to take a stand contrary to the instructions issued by the Board. It is a different matter that an assessed can contest the validity or legality of a departmental instruction. But that right cannot be conceded to the department, more so when others have acted according to such instructions, vide Collector of Central Excise, Bombay Vs. Jayant Dalal Private Ltd., M/s. Ranadey Micronutrients etc. Vs. Collector of Central Excise, M/s. Poulose and Mathen Vs. Collector of Central Excise and another, ,- British Machinery Supplies Co. Vs. Union of India (UOI) and Others, Of course the appellate authority''s also not bound by the interpretation given by the Board but the assessing officer cannot take a view contrary to the Board''s interpretation."

6. Above being the position action of respondent No.2 seeking enforcement of the bank guarantees cannot be sustained. Till disposal of the stay applications, the bank guarantees shall continue to be operative. However, the disposal of the stay applications pending before the appellate authority would not be dependent upon the view taken by us in the aforesaid context as the applications have to be considered in proper perspective, by respondent No. 1. The writ petition is allowed to the extent indicated above.

7. Copy of the order be given dusty to counsel for respondents 1 & 2.

