(2002) 06 BOM CK 0057

In the Bombay High Court

Case No : Writ Petition No. 597 of 2002

Virendra Kumar Gandhi APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 12-06-2002

Acts Referred:

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

Citation : (2002) 83 ECC 591 : (2002) 103 ECR 489 : (2002) 143 ELT 508

Hon'ble Judges : J.P. Devadhar, J;H.L. Gokhale, J

Bench : Division Bench

Advocate : S. Diwan and R.M. Azim, instructed by V.G. Rege, for the Appellant; A.J. Rana and R.P. Lambey, instructed by H.D. Rathod and M. Patel, for the Respondent

Judgement

H.L. Gokhale, J.—Heard Mr. Diwan in support of this petition Mr. Rana appears for Respondent Nos. 1, 2 and 3. Mr. Patel appears for Respondent Nos. 4 and 5/ Respondents added in view of the order passed today on Chamber Summons No. 130 of 2002.

2. This petition seeks directions to the Respondent Nos. 1, 2 and 3 to give effect to the order dated 18th April, 2001 passed by the Commissioner of Customs (Adjudication) directing them to return the amount of Rs. 2,00,30,000/- which has been deposited by the first petitioner with Respondent Nos. 1, 2 and 3. This is prayer clause (c) of the petition. The first petitioner is a director of the second petitioner-company which was earlier known as Dimple Overseas Limited.

3. It is the case of the petitioner No. 1 that he is exporter and he has been wrongly involved in the transactions of Respondent Nos. 4 and 5. The first petitioner was forced to deposit the amount of Rs. 2,00,30,000/- supposed to be his part of the duty allegedly evaded by the Respondent No. 4/Kunal Overseas Limited, an importer company. This was on the statement of Mr. Paresh Parekh Respondent No. 5 (a director of Kunal Overseas Limited) and, the petitioner was

in fact in custody and was threatened to be detained under COFEPOSA. It is his case that it is because of these circumstances, that he tendered this amount to the Respondent Nos. 1, 2 and 3. The petitioner has annexed at Exhibit - F to the petition, a letter on behalf of his company i.e. Dimple Overseas Limited dated 29th January, 1999 forwarding therewith 25 Demand Drafts totalling to this amount of Rs. 2,00,30,000/-. It is further case of the Petitioner that in view of this deposit, the threatened action was not taken.

4. It is stated by the first Petitioner that he demanded refund of this amount by his Advocates letters dated 14th October, 1999, 12th October, 1999 and 1st November, 1999, but the amount was not forthcoming. As far as the alleged evasion of duty is concerned, appropriate show cause notices were issued to the different parties u/s 28 of the Customs Act, 1962, but that notice was not issued to the Petitioner or to the Dimple Overseas Limited. The notice was, however, issued to the Petitioner/Dimple Overseas Limited for the purposes of recovering the penalty along with others concerned. The adjudication took place before the Commissioner of Customs and by his order dated 18th April, 2001, he came to the conclusion that no duty was demandable from Shri V.K. Gandhi the first Petitioner or M/s. Dimple Overseas Limited and, therefore, this deposit collected from them i.e. Rs. 2,00,30,000/- has to be refunded to them forthwith. This order is not being acted upon and, therefore, this petition has been filed.

5. Mr. Diwan, learned Counsel for the Petitioners has pointed out from the order that the Petitioners were not at all involved in this alleged evasion of duty, though they were alleged to have been indirectly involved through a third party i.e. M/s. Bishwanath Ind. Limited. All these submissions have been considered and accepted by the Commissioner and, thereafter above findings have been arrived at and necessary directions have been given by the Commissioner in the last paragraph of his order, that the duty demanded is confirmed only against Kunal Overseas Limited and its partner to the tune of Rs. 8,17,57,797/-. As far as the Petitioner is concerned it has been held as pointed out above earlier that the deposit of Rs. 2,00,30,000/-has to be refunded to the Petitioner.

Though more than one year has gone after this order, no appeal has been filed by the Respondent Nos. 1, 2 and 3 to CEGAT nor is the order neomg (sic) acted upon.

6. As far as the part of the order which is against the Respondent Nos. 4 and 5 is concerned, Kunal Overseas Limited Respondent No. 4 has filed an appeal with CEGAT and moved an application for stay. Mr. Diwan has drawn our attention to the order dated 27th May, 2002 passed thereon and has pointed out that during the course of those proceedings also the departmental representative has relied upon the above referred order dated 18th April, 2001. This is specifically referred in para 6-B and C order dated 27th May, 2002. These two paras also record that the amount of Rs. 2,00,30,000/- has been deposited by Dimple Overseas Limited. The Tribunal while deciding that stay application has held that an amount of Rs. 8,17,57,797/- is payable by Kunal Overseas Limited (arrived at by

specifically deducting Rs. 2,00,30,000/-) and has disposed of the stay application by directing redeposit of this amount of over 8 crores. Mr. Diwan, therefore, submits that as far as Kunal Overseas Limited is concerned, it cannot be said to have stake in the amount of Rs. 2,00,30,000/- which had been admittedly deposited by the Petitioners with Respondent Nos. 1, 2 and 3. He, therefore, submits that the amount be directed to be refunded.

7. Mr. Rana, learned Counsel appearing for Respondent Nos. 1, 2 and 3 on the other hand submitted that if this was a part of duty, refund application has to be made u/s 27 of the Customs Act, 1962. However, he alternatively submitted that Respondent Nos. 1, 2 and 3 were contemplating to file an appeal against the order of the Commissioner dated 18th April, 2001 of which enforcement is sought in the present petition. Mr. Patel learned Counsel for added Respondent Nos. 4 and 5 submitted that it is only the stay application filed by his client which had been rejected and the main appeal is yet to be heard and decided.

8. Having heard all the Counsel for the respective parties, we are of the view that in view of the clear direction by the Commissioner and also in view of the fact that for more than a year no appeal has been filed by Respondent Nos. 1, 2 and 3, Petitioner is entitled to the refund of Rs. 2,00,30,000/-. However, since Respondent Nos. 1, 2 and 3 were contemplating to file an appeal against the order of the Commissioner, we thought that the minimum necessary order would be that the amount ought to be brought into this Court. We specifically asked Mr. Rana as to within what time the Respondent will file their appeal Mr. Rana sought instructions from the instructing Officers. However, they were not in a position to make a specific statement. In view thereof, we hereby direct the Respondent Nos. 1, 2 and 3 to deposit this amount of Rs. 2,00,30,000/- in this Court within a period of four weeks. We grant a period of three months which in our view should be reasonable period for Respondent Nos. 1, 2 and 3 to file an appeal. The amount as and when deposited can be withdrawn by the Petitioners by giving a bank guarantee of a nationalized bank which should be kept alive for this period of three months and for the further period of the proceedings before the Tribunal in the event an appeal is filed to the Tribunal and stay obtained. We make it clear that if no such appeal is filed by the Respondent Nos. 1, 2 and 3 within a period of three months, or in the event no stay is granted, the bank guarantee will stand discharged. The amount will be deposited in this Court along with the interest @ 8% per annum from 18th April, 2001.

In our view this order will meet the ends of justice. Hence, with this order the petition stands disposed of.

The parties to act on an ordinary copy of this order, duly authenticated by the Associate of this Court.