(2000) 08 GUJ CK 0131

In the Gujarat High Court

Case No : Special Civil Application No. 4141 of 2000

World Tradimpex Ltd APPELLANT

Vs

Commissioner of Customs, Kandla and Others RESPONDENT

Date of Decision : 10-08-2000

Acts Referred:

Citation : (2001) 75 ECC 259

Hon'ble Judges : P.B. Majmudar, J;B.C. Patel, J

Bench : Division Bench

Advocate : Jitendra Nalkan, for the Appellant; Mukesh R. Shah, For Respondent No. 1, 2, for the Respondent

Final Decision : Allowed

Judgement

B.C. Patel, J.—Rule. Mr. Mukesh R. Shah waives service of rule on behalf of the respondents.

2. The petitioner has filed this petition for directing the respondent no.1 to give the benefit of full and final settlement as per Kar Vivad Samadhan Scheme in respect of the disputed penalty of Rs. 4,45,000/= imposed by the Assistant Commissioner of Customs, on 26.7.97. Short facts leading to the present proceedings are as under.

3. In view of the Scheme known as Kar Vivad Samadhan Scheme, 1998 (hereinafter referred to as "KVSS") for full and final settlement of tax arrears, Commissioner of Customs was moved. Proceedings were initiated against the petitioner in connection with the cargo. Case of the Revenue was that the cargo did not contain only scrap but also contained plastic commodities. On examination of the cargo, it was found that there were three items viz. poly propylene strips, PP Granuals and Recycled PP Scrap. The total weight of the different commodities was 10540 Kgs. whereas the cargo declared was 12000 Kgs. It was the case of misdescription of weight and hence the cargo was seized. Deputy Commissioner of Customs, after hearing the matter passed an order of

confiscation of the goods valued at Rs.4,45,150/- and imposed penalty of Rs. 4,45,000/- upon the petitioner no.1.

4. Being aggrieved by the aforesaid order, an appeal was preferred by the petitioner before the Commissioner of Customs (Appeals) who was pleased to grant conditional stay. During the pendency of the appeal, the Commissioner of Customs - respondent no.1 herein, by a letter dated 3.11.98 informed the petitioner about the KVSS being introduced. The petitioner thereupon filed a declaration in the prescribed form No. 1-B.

5. The petitioner opted for KVSS and submitted the form no. 1-B. In response to the application filed by the petitioner along with form No. 1-B dated 21.12.99, the Commissioner of Customs, Kandla in exercise of his powers, considering the relevant material, determined the amount of Rs. 2,22,500/- payable by the petitioner towards the full and final settlement of the arrears and issued a certificate in form no. 2-B in favour of the petitioner. The said certificate is dated 3rd February, 1999. It is contended by the petitioner that on receipt of the certificate, demand draft in the sum of Rs. 2,22,500/- was obtained in favour of Commissioner of Customs and the same was forwarded to the Commissioner of Customs, Kandla along with RPAD letter dated 3.3.99. A copy of the said letter is produced at Annexure : E to the petition. The said amount was appropriated by respondent no.1. However, Commissioner of Customs respondent no.1 vide his letter dated 5.8.99 communicated to the petitioner that the petitioner had not paid the sum payable as per the form no. 2-B within 30 days of the issuance of form and therefore, the petitioner is not entitled to full and final settlement of tax arrears certificate in form no. 3 under KVSS.

6. In reply to this, vide letter dated 9.8.99, it was pointed out that the requisite amount was paid within a stipulated time and the demand draft was encashed. Therefore, it is highly improper for the Revenue to reject the application.

7. It appears that the Assistant Commissioner of Customs, by his letter dated 27.11.99, informed that the petitioner had sent the demand draft drawn on the State Bank of India, KFTZ Branch and it was credited to the Customs Treasury on 17.3.99 and therefore, there was delay of 10 days. The officer conveyed the information that the draft could have been sent to the State Bank of India, Port Branch. Copy of the said letter is annexed to the petition at Annexure : I.

8. It is contended by the petitioner that the petitioner in response to the scheme applied to the Commissioner of Customs, Kandla, who issued form no. 2-B. Even the demand draft was forwarded. Zerox copy of the demand draft is also placed on the record at page 49. It is also required to be noted that the demand draft was tendered for realisation and the amount had been credited. If the case of the Revenue was that the petitioner after a period of 30 days took out the demand draft and sent it intentionally after a belated period, the question would have been quite different. But in the instant case, before the expiry period, demand draft was taken out and in fact was posted to the officer concerned.

9. The Revenue has filed an affidavit of Assistant Commissioner of Customs, inter alia stating that while issuing the certificate, the petitioner was specifically informed that the amount shall be made payable at State Bank of India, Kandla Port Branch, Kandla, in favour of the Commissioner of Customs so that the amount can be realized and received by the department immediately. In the affidavit, there is a reference to the cheque and not to the demand draft. But that apart, the petitioner forwarded the demand draft payable at the State Bank of India, KFTZ Branch, Kandla and that fact is not disputed and cannot also be disputed. It is admitted by the Revenue that the amouont was credited to the Customs Treasury on 17.3.99. In view of this, it is stated that the amount was credited after the period of one month from the date of receipt of the certificate. If the certificate is perused, Annexure D in form No. 2-B, wherein it is mentioned as under.

"Declarant is hereby directed to make payment of the sum payable within 30 days from the date of this certificate."

As a matter of fact, when the petitioner has forwarded the demand draft within one month, it is hardly fair ground to say that the petitioner has not forwarded the amount within a period of one month.

10. Before Madras High Court, in the case of Sri Kanchi Steel Pvt. Ltd. Vs. Designated Authority, CCE, , the amount was paid by way of a cheque which was received by the Revenue and sent for realization, which got realized on 16.3.99 instead of 13.3.99 being the last date for payment of the disputed amount, the Court held that the petitioner was entitled to the benefit of KVSS. In that case, 50% amount was paid and the rest of the amount was paid by cheque. The Court pointed out that the respondents having received the same and also having realized the cheque amount within two days after depositing contend that the petitioner has not paid 50% of the amount before the prescribed last date under the KVSS. In the instant case, the petitioner took proper care and obtained demand draft and forwarded the same by RPAD, which was received within a period of one month and the Revenue accepted the same. If the Revenue was of the opinion that the petitioner has not forwarded the demand draft as demanded, then the Revenue ought not to have accepted the demand draft and ought to have returned the demand draft. Having deposited the demand draft and after getting the amount credited, it is now not open to the Revenue to deny the benefit on such ground.

11. Considering the facts and circumstances of the case, the petition is required to be allowed as the petitioner has paid the amount by demand draft within a period of one month and the amount has been accepted by the Revenue. The petition is accordingly allowed. The respondent no.1 is directed to issue certificate in accordance with law and to grant the benefit of the scheme to the petitioner. Rule is made absolute.

