(2015) 03 DEL CK 0120

In the Delhi High Court

Case No : Writ Petition (C) 2150/2015

Wunderhommz Enterprises Pvt. Ltd. APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 04-03-2015

Acts Referred:
Customs Act, 1962 — Section 48

Citation : (2015) 220 DLT 259 : (2015) 320 ELT 81 : (2015) 33 GSTR 270

Hon'ble Judges : Sanjeev Sachdeva, J.;Badar Durrez Ahmed, J.

Bench : Division Bench

Advocate : Purti Marwaha, Henna George and Anura Gupta, for the Appellant

Final Decision : Dismissed

Judgement

Badar Durrez Ahmed, J.

CM 3863/2015

Allowed subject to all just exceptions.

WP(C) 2150/2015 and CM 3862/2015

1. This petition challenges the holding of the fifth auction in respect of the subject goods which are time expired goods and are to be disposed of in accordance with Section 48 of the Customs Act, 1962.

2. It is the case of the petitioner that in the fourth auction, which was conducted in respect of the said goods, the petitioner''s bid was the highest. Consequently, the petitioner should have been given the said goods at the price offered by the petitioner. Instead, the respondents have put the said goods to a fifth auction. The petitioner has placed reliance on Circular No. 50/2005-CUS dated 01.12.2005 issued by the Central Board of Excise and Customs. The relevant portion of the said circular is as under:-

"(i) The procedure shall be applicable only to unclaimed/ uncleared cargo landed at least one year prior to the date on which the list of goods for customs "no objection" is prepared. In other words, this liberalized procedure would not apply to goods which have been lying uncleared for a period less than one year from the date of their import.

(ii) The custodian will furnish the list of items to be considered for disposal to customs. The list will contain complete particulars such as Bill of Lading/Airway Bill number, description of goods, weight, name of the consignee/consignor, etc. A notice shall simultaneously be issued by the custodian to the consignee at his known address and also displayed on the custodian''s notice board stating that if the goods are not cleared within 15 days they be sold by the custodian under Section 48 of the Customs Act, 1962.

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(vi) The disposal of the goods shall be made by public auction/ E-auction/tender. The date of the public auction/ E- auction/tender should be adequately publicized in advance through national newspapers (both in English and Hindi), departmental website as well as in at least one newspaper in the local language. The values assessed by the approved valuers appointed by the custodians shall form the "reserve price". The maximum number of auctions/tenders to which a lot is subjected should be four, with the goods to be necessarily sold for the highest bid in the last auction/tender regardless of the reserve price fixed. Reserve price fixed would not be applicable case of fourth auction/tender. In the event of the goods not being disposed of in the first auction, subsequent auctions/ tender should be conducted in time bound manner.

xxx"

(underlining added)

Relying on the above paragraph 3(vi), the petitioner states that the maximum number of auctions has been specified to be four and the highest bidder has to be sold the goods irrespective of the reserve price. According to the petitioner, it was the highest bidder in the fourth auction and therefore, the subject goods could not be subjected to a further auction, as has been done by the respondents. Consequently, it has been prayed that the fifth auction be cancelled and goods be sold to the petitioner at the price offered in the fourth auction.

3. Mr. Nijhawan, the learned counsel appearing on behalf of the customs, submits that the Circular No. 50/2005 is applicable only where the disposal of the time barred cargo under Section 48 of the said Act is being done by the custodians and not by the customs directly. The applicable circular for disposal by the customs is Circular No. 12/2006-CUS dated 20.02.2006. In that circular a different mode of conducting the sale of such goods has been provided. Though the sale has to be done by an E-auction, there is no reserve price as such which is fixed. On the other hand, a Joint Pricing Committee is constituted to determine the fair price of goods and there is a procedure prescribed for disposal of the

goods based on the said fair price. Clauses 3.10 to 3.12 are relevant and they are reproduced herein below:-

"3.10 The highest bid in the auction-cum-tender shall be accepted by the JPC if the bid is more than, or equal to or close (not less than the Fair Price by 5% to 10%) to the Fair Price. Otherwise, the goods shall be put up for auction-cum-tender the second time. In the event of the goods not being sold in the first two auction-cum- tenders, the goods shall be sold at the highest bid obtained in the third auction-cum-tender. If any lots still remain unsold after the third offer for sale, the Commissioner should ascertain whether the JPC has good reason for the goods remaining unsold.

3.11 The goods should not be withdrawn from auction-cum- tender on flimsy grounds, such as the possibility that the goods may fetch a slightly higher price in a subsequent auction.

3.12 All post-auction/tender offers, even if these are for amounts higher than the successful bid, shall be strictly disregarded and not taken cognizance of in any manner."

4. In terms of Clause 3.10 of the Circular No. 12/2006, it is evident that the goods have to be sold to the highest bidder obtained in the third auction. In the present case, the difficulty is that the petitioner did not participate in the third auction. Therefore, even if the Circular No. 12/2006 were to be strictly adhered to, the petitioner would have no case. Moreover, we are clear that it is Circular No. 12/2006 which would be applicable in the present case and not Circular No. 50/2005 because the latter circular pertains to auctions by the custodians and the former circular applies to auctions by the customs directly. The present case is one of an auction by the customs and not by any of the custodians. Therefore, the petitioner does not have any locus standi in the present matter.

5. We may also point out that the petitioner had, in fact, participated in the fifth auction, which was conducted on 28.02.2015, and the petitioner''s bid was not the highest. The petitioner, having lost out in the fifth auction, cannot be permitted, after it has participated in the same, to challenge the said fifth auction. We are also informed that the highest bid obtained in the fifth auction is about Rs. 80 lacs more than what the petitioner had offered in the fourth auction.

6. In these circumstances, there is no merit in the writ petition. The same is dismissed.

