
(2002) 06 BOM CK 0067
In the Bombay High Court
Case No : Writ Petition No. 3999 of 1987

WWI Cranes Limited

APPELLANT

Vs

Krishna Murthy

RESPONDENT

Date of Decision : 05-06-2002

Acts Referred:

Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 129A(5)

Citation : (2002) 103 ECR 642 : (2002) 143 ELT 500

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

Bench : Division Bench

Advocate : K.K. Shroff, instructed by Dhru and Co, for the Appellant; K.C. Master, instructed by H.D. Rathod, for the Respondent

Judgement

H.L. Gokhale, J.—Heard Mr. Shroff for the Petitioner. Mr. Master appears for Respondent Nos. 1 and 2. Respondent No. 1(A)-CEGAT is a format Respondent.

2. The Petitioner is a limited company engaged in the business of manufacture and sale of cranes. A Government of India Enterprise known as Fact Engineering and Design Organization (for short "FEDO") desired to have manufactured and erected a ship unloader which is a kind of power crane for unloading the raw materials from bulk carriers. The said system was to have a capacity of 600 Tonnes Per Hour (TPH). It was imperative that along with the grab buckets, the system would include a track loader to act as a bulldozer to collect the materials concerned. The petitioner had filled in the necessary quotation as per the advertisement of FEDO on 18th February, 1982. The quotation given by the petitioner was accepted by FEDO. Accordingly, the petitioner applied for the import licence. The licence issued had a specific clause with respect to the pay loader. However, that clause was cancelled with a rubber stamp by the Joint Chief Controller of Imports and Exports (JCCI). In view of this deficiency in the said import licence issued on 31st October, 1984, the Petitioner made further inquiry with respect to this deletion and was informed that the particular item was freely

importable and could be imported under the Open General Licence (OGL).

3. Accordingly, the Petitioner placed an order for this kind of loader. It filed a Bill of Entry and expected clearance but was issued a show cause notice on 11th June, 1985. The show cause notice contended that the pay loader was not a component of the system and was liable for penal action and confiscation u/s 111 of the Customs Act, 1962. The Petitioner filed its reply on 13th June, 1985. However, the said reply was not accepted and by the order dated 13th August, 1985, the 1st Respondent herein i.e. the then Additional Collector of Customs held that the track loader was not a component of the system. The same was directed to be confiscated with an option to the petitioner to get it released by paying redemption fine of Rs. 5 lakhs.

4. Now, it so happened that in view of a further representation from the Petitioner to the Licensing Authority, the item concerning the track loader was specifically reinstated in the licence by the entry made on 28th February, 1986. This amendment was effected to the licence by attaching a list of this added item dated 28th February, 1986.

5. In view of this amendment, the Petitioner addressed a letter once again to the Assistant Collector of Customs on 4th March, 1986 to reassess the Bill of Entry. However, that did not happen. Therefore, the Petitioner got the pay loader released by paying the redemption fine of Rs. 5 lakhs on 27th May, 1986. Thereafter the Petitioner preferred an appeal to the Customs, Excise and Gold (Control) Appellate Tribunal (CEGAT) against the order-in-original passed by Respondent No. 1. That appeal came to be rejected on the ground that there was delay in preferring the same. The order of the CEGAT dated 25th August, 1987 is annexed to the Petition as Exhibit J.

6. It is at that stage that this Petition was filed in November, 1987. However, the Petition, as it was initially filed, challenged only the order-in-original dated 13th August, 1985. Subsequently it was amended to include the challenge to this order of CEGAT as well.

7. Mr. Shroff, learned Counsel appearing for the Petitioner, submitted that although there was a delay in preferring the appeal to CEGAT, it was undoubtedly a case wherein the provision u/s 129A(5) of the Customs Act, 1962 should have been applied. Mr. Shroff further submitted that the Petitioner does have a good case on merits and substantial justice requires that the CEGAT ought to have given the opportunity to the Petitioner to advance the submissions. The provision u/s 129E of the Customs Act, 1962 requires a pre-deposit to be made. In the present case, the Petitioner had paid the penalty and got the pay loader released. Therefore, this was not a case where any penalty remained to be paid to the Revenue. Mr. Shroff submitted that Petitioner's case should have been considered on merits in view of the fact that the licence, as it was originally issued, did include the import of the pay loaders though the particular item was scored out by the rubber stamp. The Petitioner was informed that the pay

loaders could be imported freely under OGL and when that was done, redemption fine was insisted for getting the pay loaders released. Subsequently, the very licence has been amended with retrospective effect. It was necessary for the CEGAT to examine the submissions of the Petitioner as to what was the effect of the reinstatement of the item of pay loaders in the licence. Mr. Shroff submitted that the term "reinstatement" implied a retrospective incorporation of the particular entry and if that was so, the petitioner was entitled to import the item under the licence without any difficulty. Mr. Shroff submitted that, in any case, the submissions required to be considered.

7. Mr. Shroff then submitted that the other submission of the Petitioner was that the pay loader was a component of the system and this submission had been rejected by the Authority which passed the order-in-original. On this also the Petitioner out to have been heard before the CEGAT and the Appeal before the CEGAT was in nature of the First Appeal.

8. Mr. Master, learned Counsel appearing for Respondent Nos. 1 and 2, submitted that the Appeal had to be preferred within three months as required u/s 129A(3) of the Customs Act, 1962. As far as a case of sufficient cause under Sub-section (4) is concerned. Mr. Master submitted that one of the submissions made by the Petitioner was that in the preamble of the impugned order, the period of limitation for filing the appeal was not mentioned, but this cannot be sufficient cause for explaining the delay which was a delay of 10 months and 27 days. Mr. Master, therefore, submitted that the order passed by the CEGAT ought to be maintained.

9. Having heard both the Counsel and having gone through the order passed by the CEGAT, we find that apart from the aforesaid submission with respect to the preamble of the impugned order being silent on the period of limitation, the petitioner had specifically submitted that substantial justice required the delay to be condoned. Both the submissions canvassed by Mr. Shroff raise issues which have to be considered if a decision is to be arrived at on merits of the matter. As far as substantial justice is concerned, the Apex Court in the case of G. Ramegowda, Major and Ors Vs. Special Land Acquisition Officer, Bangalore, has specifically held as follows :-

"However, the expression sufficient cause in Section 5 must receive a liberal construction so as to advance substantial justice and generally delays in preferring appeals are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of the delay."

In the present case, we cannot say that there is a deliberate inaction or gross negligence or lack of bona fides on the part of the Petitioner. The Petitioner has an arguable case and it had to be looked into by the CEGAT which has dismissed the Appeal only on the ground of limitation and for failure to make out the case for sufficient cause. In our view, the Petitioner had made out the case of

sufficient cause u/s 129A(5) of the Customs Act, 1962 and the CEGAT ought to have condoned the delay.

10. In the circumstances aforesaid, we interfere and set aside the order dated 25th August, 1987 passed by the CEGAT dismissing the appeal, condone the delay and restore it to the file of the CEGAT with a further direction that the restored appeal be decided, preferably within six months and in any case, by the end of December, 2002. Rule is made absolute as above with no order as to costs.

11. Mr. Master points out that from the order of CEGAT although it is seen that the submission with respect to the amendment of the licence has been taken, but the one with respect to the pay loader being a component of the system is not raised. We permit the Appellant to raise this submission by amending the appeal memo before the CEGAT, if necessary.

12. Authenticated copy of this judgment be made available to the parties.