Capstan Engineering Works Vs. Union of India (Uoi) and ors.

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Court : Mumbai

Decided On : Mar-21-2003

Reported in : 2003(5)BomCR584

Judge : Daga V.C. and ;Devadhar J.P. JJ.

Acts : Customs Act, 1962 - Sections 25(1); Industries (Development and Regulation) Act, 1951 - Sections 10 and 11

Appeal No. : Writ Petition No. 2478 of 1988

Appellant : Capstan Engineering Works

Respondent : Union of India (Uoi) and ors.

Advocate for Def. : H.V. Mehta and ;A.C. Singh, Advs.

Advocate for Pet/Ap. : A. Kotwal, Adv., i/b., H. Shroff & Co.

Disposition : Petition dismmissed

Judgement :

Daga V.C., J.

1. Heard. Petitioners are a partnership firm registered under the Partnership Act, 1932. The petitioners are also registered as a Small Scale Industrial Unit with the Director of Industries, Maharashtra State and Bearing Registration No. 11-07-

03298-PMT-SSI. The petitioners have filed the petition and amongst others prayed for the following reliefs:--

'To issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction declaring that the petitioner is entitled to continue to avail itself of the benefit accruing to it under the Notification bearing No. 216/88 dated 7th July, 1988, of having to pay a concessional rate of duty on the Jumbo Rolls of colour photographic papers which it imports.'

2. The petitioners have also prayed that the Notification bearing No. 216/88 dated 7th July, 1988 be declared as illegal and ultra vires and claimed directions against the respondent Nos. 1 & 2 to allow them to clear the Jumbo Rolls of colour photographic papers which the petitioners had imported on the payment of concessional rate of duty.

3. The notification, which is the subject-matter of challenge in this petition, reads as under:---

'Customs Notification No. 216/88, dated 7th July, 1988.-In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government being satisfied that it is necessary in the public interest so to do, hereby exempts jumbo rolls of graphic art films and jumbo rolls of photographic colour paper, of width I metre or more and of length 600 metres or more, falling within Chapter 37 of the First Schedule to the Customs Tariff Act, 1973 (51 of the 1975), when imported into India, from so much of that portion of the duty of customs leviable thereon under the said first schedule as in excess of the amongst calculated at the rate of 60 per cent ad valorem, subject to the following conditions:---

(i) The importer undertakes conversion of the said jumbo rolls by slitting or confectioning into finished products;

(ii) The importer holds an industrial licence under the Industries (Development and Regulation) Act, 1951 (65 of 1951), for slitting and confectioning of photo sensitised materials from jumbo rolls.

(2) This notification shall be in force upto and inclusive of the 30th June, 1989.

Explanatory Note: This notification seeks to prescribe a concessional rate of basic customs duty of 60% ad valorem on jumbo rolls of graphic art films photographic colour paper subject to certain conditions.'

4. The petitioners were not registered under the Industrial (Development & Regulation) Act, 1951 as such they were not holders of licence under I.D.R. Act, 1951. The petitioners were regularly importing from Germany Jumbo Rolls of Photographic Colour for their use and consumption in their laboratory. However, petitioners did not have the facility of slitting and confectioning. The petitioner used to get the said work executed through the respondent No. 3 i.e. the New India Industries Limited and the petitioners used to claim benefits of concessional rate of duty under Notification No. 1979/84-CUS dated 12-6-1984 which was in force upto and inclusive of 30th June, 1985. The said notification came to be amended by another Notification bearing No. 206/85 customs by which the period of validity of the notification No. 179/84 was extended upto 30th June, 1988. In view of this extention, the validity period of the said exemption Notification No. 179/84-CUS dated 12-6-1984, whereby exemption from payment of customs duty in excess of 60% on Jumbo of Photographic Colour was granted, came to be extended by another three years i.e. upto 30th June, 1988.

5. The Ministry of Industries, Government of India released a Press Note dated 8th June, 1986 during the operation of the notification No. 179/84 as amended by the Notification No. 206/85 which read as follows:---

'Subject.-Inclusion of slitting/confectioning of photos sensitized material from Jumbo Rolls in Schedule IV of the exemption notification dated 16th February, 1973.'

It has been observed in the past that large number of small scale and medium scale units are being established for conversion of imported Jumbo Rolls into photo sensitized goods, based on imported Jumbo Rolls taking undue advantage of liberalized import policy. Besides, huge permanent imports, there is poor quality production following the market as even conversion of Jumbo Rolls into photo sensitized goods, requires specialized technical know how which is not really possible in the small scale and medium scale sector. It has accordingly been decided to make it obligatory for all applicants including these in the small scale sector to obtain an industrial licence under the provisions of the Industries (Development and Regulation) Act, 1951 and to include the activity 'Slitting/Confectioning of photo sensitized material from Jumbo Rolls' in the Ministry of Industry exemption notification dated 16th February, 1973. A separate notification is being issued in this regard.

2. Consequently, all industrial undertakings, including those in the small scale, intending to taking up the above mentioned activity will require an industrial licence under the provisions of the Industries (Development and Regulation) Act, 1951.

3. The existing industrial undertakings which are not having industrial licence but have taken the effective steps prior to the date of notification are required to obtain a C.O.B. licence within a period of 6 months from the date of issue of the notification. All others will have to obtain an industrial licence for the purpose.'

A perusal of the above press note would make it clear that the petitioners or any person intending to take advantage of the exemption notification required to hold industrial licence under I.D.R. Act, 1951 and should have involved in undertaking the activity of 'slitting and the confectioning of photo sensitized material from Jumbo Rolls'. The petitioners being the small scale industrial unit did not have an industrial licence under the provisions of I.D.R. Act, 1951 nor the petitioners has taken any effective steps, prior to the notification, to obtain carry on business (C.O.B.) licence within a period of six months from the date of issue of the notification.

6. In view of the above notification dated 18-7-1986, it was necessary for the industrial undertakings to obtain a industrial licence or C.O.B. licence within a period of six months from the date of the notification. The last date for moving such application was 17-1-1987. The petitioners did not apply for C.O.B. licence or licence under I.D.R. Act though it could have applied on the footing that it is existing industrial undertakings which had taken effective steps prior to the issue of the notification dated 18-7-1986.

7. The petitioners if desired to claim exemption, were bound to apply for the C.O.B. licence or licence under the Industrial (Development & Regulation) Act, 1951. Since the petitioners did not apply for the industrial licence under I.D.R. Act or C.O.B. licence, the petitioners did not qualify for the concessional rate of duty under the provisions of the aforesaid exemption notifications. The petitioners, faced with the aforesaid situation by way of last attempt, challenged the vires of said notification on the ground that the said notification does not serve any public purpose as alleged in the impugned notification and that the conditions put therein; particularly condition No. 2 is unreasonable as such liable to be struck down.

8. In answer to the position, the respondents filed their counter affidavit and contend therein that the Government of India having noticed that in the past large number of Small Scales and Medium Scale Units like petitioners have been using imported Jumbo Rolls films for making photo sensitised goods taking undue advantage of the liberalised import policy and besides, the huge imports, they were pushing poor quality production in the market. The Government of India having realised that conversion of Jumbo Rolls into photo sensitised goods required specialised technical know how: which in their opinion, was not really possible in the Small Scale and Medium Sector Industrial Units. In view of this, the Government of India decided to make it obligatory for all units, including (those in the Small Scale Sector to obtain an industrial licence under the provisions of I.D.R. Act, 1951 or C.O.B. licence.

9. Considering the said policy disclosed in the said affidavit, it can hardly be said that there was no policy behind the issuance of the notification although the said notification is not the subject matter of the challenge in the petition. Having seen that adequate time was granted to the petitioners to apply for the C.O.B. licence and to adjust its affairs in tune with the exemption notification, but the petitioners chose not to apply during the stipulated time, the petitioners were rightly denied exemption and it was rightly held that the petitioners were not entitled to any exemption under the said notification.

10. We, as a matter of fact, do not see any justification on the part of the petitioners to challenge the validity of the said notification on any of the grounds

much less on the ground that the conditions put in the notification are unreasonable and not in public interest. Admittedly, the petitioners were not holding the industrial licence or C.O.B. licence. They did not apply for the same in spite of granting them adequate opportunity within the stipulated period, as such the petitioners have hardly any case to make grievance in this behalf.

11. Mr. Kotwal, learned Counsel for the petitioners sought to canvass an argument that the impugned notification is wholly unreasonable inasmuch as the condition in the notification that every importer must hold an industrial licence under the I.D.R. Act, 1951 is wholly unworkable. According to him, because of the above condition there will be no importer who will be in a position to avail the benefit of the said notification. There is no merit in this contention, because, firstly there is no such challenge set up in the petition to the effect that no importer will be in a position to avail the benefit of the notification, hence the argument is not based on facts on record. Secondly, the classification between the importers with industrial licence and without industrial licence is an intelligible classification and if the Government on the basis of the past experience takes a policy decision and think it proper that the benefit of the exemption should be restricted to the importers who are governed by the provisions of the Industries (Development & Regulation) Act, 1951 and grants time to the importers to obtain industrial licence or carry on business licence, no fault can be found with such a notification. As a matter of fact, such notification has to be treated as most reasonable one.

12. It is needless to mention that the Apex Court in the case of Kaniska Trading and another v. Union of India & another, reported in : 1994ECR637(SC) , held that the exemption notification does not hold out any enforceable promise. Considering the entire tenor of the petition and the submission, we do not see any case in favour of the petitioners or any reason to exercise the writ jurisdiction as prayed for. The petition is, therefore, dismissed holding it to be without any merits, with no order as to costs.