Elecon Engineering Co. Ltd. Vs. Union of India (Uoi)

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Court : Gujarat

Decided On : Jan-08-2002

Reported in : 2002(146)ELT301(Guj)

Judge : D.M. Dharmadhikari, C.J. and; D.A. Mehta, J.

Acts : Constitution of India - Article 226; Customs Act, 1962 - Sections 25(1) and 142(2)

Appeal No. : Special Civil Application No. 137 of 2001

Appellant : Elecon Engineering Co. Ltd.

Respondent : Union of India (Uoi)

Advocate for Def. : Mukesh R. Shah,; Sonia Hurra and; M.K. Vakharia, Adv

Advocate for Pet/Ap. : J.G. Shah and; Harshad J. Shah, Advs.

Disposition : Petition dismissed

Judgement :
ORDER

D.A. Mehta, J.

1. The petitioner, a Limited Company, has filed this petition under Article 226 of the Constitution of India seeking a writ of mandamus or any other direction or

order directing the respondents to refund a sum of Rs. 3,85,60,727/- recovered from the petitioner-company by way of encashing the Bank Guarantee issued by the State Bank of India, Anand Branch.

2. It appears that the petitioner entered into a contract with the Maharashtra State Electricity Board (hereinafter referred to as the 'Board') to execute a project at Chandrapur for Coal Handling Plant on turn-key basis. For the purpose of executing the said project, the petitioner-company was required to import certain materials from abroad and accordingly the petitioner-company applied for import licence on 1-1-1998. The said licence was issued by the Company Authority on 5-3-1998. On the basis of the said li-cence, the petitioner-company imported the necessary material which were utilized for putting up the plant for the Board, It is an undisputed fact that the said import was permitted to be carried out by virtue of Notification No. 36/97-Cus. dated 11-4-1997 as amended by Notification No. 67/97-Cus., dated 8-9-1997 and Notification No. 57/98-Cus., dated 13-7-1998, which was issued under the provisions of Sub-section (1) of Section 25 of the Customs Act, 1962. By virtue of the said notification, the petitioner was exempted from paying custom duty which was otherwise leviable on import of goods. As per one of the conditions for importing the goods, the petitioner was required to execute a Bank Guarantee and furnish the same to the respondent-Department so as to ensure that in the eventuality of the petitioner-company becoming liable to pay the customs duty under the provisions of the Act, the interest of the Department would be protected.

3. It is common ground between the parties that the said Bank Guarantee came to be encashed by the Department on 20-12-2000.

4. Mr. J.G. Shah appearing on behalf of the petitioner-company assailed this action of the Department on two fold grounds, firstly that the Department had failed to follow the statutory procedure and adjudicate the liability which can be fastened on the petitioner-company before encashing the Bank Guarantee and secondly that the project for the Board had already been completed and in light of the same, as the goods have been used for the project which had originally been funded by a multilateral foreign agency, the petitioner was entitled to the exemption which it

had availed of under the aforesaid notification.

5. As against this, the stand taken on behalf of the respondent-Department as reiterated by Mr. M,R. Shah, the learned Standing Counsel for the Central Government, is to the effect that the petitioner had not fulfilled the conditions by which the licence and the exemption had been granted to the petitioner hence the Customs Department was within its rights by virtue of relevant provisions of the Act to encash the Bank Guarantee on termination of the specified period, as stipulated. In support of this submission, our attention was invited to the following clause of the Bank Guarantee :

'Whereas M/s. Elecon Engineering Co. Ltd., have undertaken to produce evidence in respect of export obligation to be discharged against the said Licence No. P/L/01001360/1/03/10/1/05, dated 5-3-98 and Notification No. CUS. 36/97, dated 11-04-97 within 30 days from the expiry of the export obligation period.'

Mr. M.R. Shah submitted that as the petitioner had failed to produce evidence in respect of the export obligation undertaken by it which was required to be discharged against the aforesaid licence dated 5-3-1998 issued by the Competent Authority, it was not open to the petitioner to contest the encashment of Bank Guarantee on any ground whatsoever.

6. The dispute, as can be seen from the facts narrated, lies in a very narrow compass. The petitioner could not fulfil its obligation to provide relevant evidence showing that it had fulfilled the export obligation which was one of the basic requirements on which the licence had been granted to the petitioner. Though this proof could not be produced in the light of some dispute with the Board, as to completion or otherwise of the project, it is not necessary for us to enter into that aspect of one matter, because the petitionerhas not sought any relief against the Board and even if any relief had been claimed, the same would be based on the terms of the contract which would be liable to be adjudicated either by an Arbitrator or before the Competent Court. Suffice it to state that the petitioner could not produce the evidence which it was required to do as per the exemption notification and thus made itself liable to the duty being recovered by way of encashment of the Bank Guarantee. In support of the submission that the

Department was within its rights to encash the Bank Guarantee, reliance was placed on Sub-section (2) of Section 142 of the Customs Act, 1962 which in unequivocal terms lays down what would be the modes of recovery once an assessee becomes liable to the duty under the Act. In the present case, there is no dispute to the fact that the goods which were imported were otherwise liable to duty under the Act and but for the exemption claimed under the impugned Notification, the petitioner would have been liable to make the payment of duty at the time when the goods were cleared. Under these circumstances, it is not possible to accept the contention that a show cause notice and final adjudication were necessary before the Bank Guarantee could be encashed.

7. Mr. M.R. Shah on behalf of the respondent-Department also drew the attention of the Court to the show cause notice dated 29-11-2000 which was served on the petitioner as well as the Manager, State Bank of India, Anand Branch and in the said notice it was specifically intimated to the petitioner that in case the export obligation has been fulfilled, the evidence of the same should be placed before the Authority within seven days of receipt of the said notice. In light of this, the contention on behalf of the petitioner that there was any violation in observing the principles of natural justice before the Bank Guarantee was enchased cannot be upheld.

8. Therefore, taking into consideration the provisions of law, the facts as are available on record, we find that the petitioner has not made out any case for intervention of this Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India and the petition is rejected accordingly.