

integrated Exports Vs. Cegat

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Court : Chennai

Decided On : Sep-14-1993

Reported in : 1993(68)ELT565(Mad)

Judge : A.R. Lakshmanan, J.

Appeal No. : W.M.P. Nos. 16033, 16035, 16037, 16039, 16056 16058 and 16060 of 1993 in W.P. Nos. 10485 to 10488 an

Appellant : integrated Exports

Respondent : Cegat

Judgement :

ORDER

1. The common question that arises for consideration in the Writ Miscellaneous Petitions is, whether the order passed by the 1st respondent in exercise of its power under Section 129E of the Customs Act, 1962, has to be stayed or not.
2. The 1st respondent has passed a common order dated 16-4-1993 directing the petitioners in each of the writ petition to pre-deposit certain amounts towards penalty. There is no dispute that the petitioners have preferred appeals to the 1st respondent against the order of the 2nd respondent imposing penalty under Section 112(a) of the Customs Act, 1962, and pending the appeals, the petitioners filed application for waiver of the pre-deposit of penalty. The common order passed by the 1st respondent in the interlocutory application seeking waiver of

pre-deposit is the subject matter of the writ petitions.

3. Under the Proviso to Section 129(E) of the Customs Act, 1962, the Collector (Appeals) or the Appellate Tribunal has been vested with the jurisdiction to dispense with the deposit of duty demand or penalty levied if it is of the opinion that such deposit of duty or penalty would cause undue hardship to the appellant subject to such conditions as it may deem fit to impose to safeguard the interest of the Revenue.

4. In the present case, the 1st respondent has directed the petitioners to file their financial statement of assets owned by them and also the details of the amounts realised on account of the sale of the goods in question. However, for reason best known, the petitioners have not chosen to file the statements, etc. The 1st respondent had also considered the question as to whether the petitioners have made out a prima facie case. In fact, one of the petitioners viz., Usha Trading Company and Uttamlal Exports Ltd., is said to have conceded that the judgment of the 1st respondent reported in 1989 (44) E. L. T., 522 is against them on merits and had reserved their rights to plead on merits at the time of final hearing. After hearing the petitioners and the Department, the 1st respondent has recorded a prima facie conclusion that the goods in question are liable for confiscation and that the petitioners have not shown that the redemption fine/penalties determined are more than the market value of the goods and that except Beer Products (P) Ltd., all other petitioners are traders who have sold the goods after obtaining orders of release from this Court. It is also Breweries throughout the year and therefore, the price of the goods are not subject to seasonal variation. The order of the 1st respondent is a reasoned and speaking order. It will not be proper for me, in exercise of my extraordinary jurisdiction under Article 226 of the Constitution to interfere with the discretionary interlocutory order on the basis of the materials and documents placed before it by the parties concerned.

5. Mr. C. A. Sundaram, learned Addl. Central Govt. Standing Counsel, would submit that K. Siraj, one of the writ petitioners, had come before this Court stating that after the issue of notice under Section 124 of the Customs Act, 1962, on certain grounds for confiscation of the goods or for imposing penalty, there can be

no further enquiry under Section 107 or 108 of the Customs Act. This contention was repelled by a Division Bench of this Court Madras (Mishra J. and Padmini Jesuduraj). Afterwards, further investigation was undertaken, which disclosed massive under-valuation and fabrication of manufacturer's invoices to show a lower value of the goods and interpolation of the documents. Therefore, it was submitted by the learned counsel for the respondents, that a very strong case is made out in favour of the Revenue and hence the Writ Miscellaneous Petition should be dismissed.

6. In this connection, it is pertinent to notice that Mr. K. Siraj is the Managing Director of Trio Import and Export Company (P) Ltd., and he is also connected with Integrated Exports and he has set up a number of companies and has imported Hope Extract. The common feature in all these writ petitions is, the petitioners had earlier obtained orders for release of the goods even before the adjudication proceedings. It is after the completion of the adjudication proceedings, penalties have been imposed on the petitioners. I am fully satisfied that the 1st respondent has properly exercised its jurisdiction while exercising its powers under Section 129E of the Customs Act, 1962, and the same does not call for any interference.

7. The petitioners would place reliance on a decision of Mishra, J. reported in *Aurelec Trust v. Superintendent of Central Excise* : 1993(63)ELT57(Mad) . In that case, the learned judge has given the following reason for interfering with the interlocutory order passed by the appellate authority.

'It may, however, be noticed that in W. M. P. Nos. 12096 of 1988, a learned single Judge of this Court on 27-7-1985 ordered interim stay of the impugned order and notice. The interim stay has continued ever since. While the petitioner has been benefited by the order of interim stay passed by this Court, the Revenue has suffered for the reason that even the amount, which the petitioner is willing to pay as a condition for the appeal, has not been deposited yet. Learned counsel for the petitioner has stated at the bar that the petitioner is willing to deposit half of the demand of the duty and for the other half willing to give security to the satisfaction of the authority concerned. This, in my opinion, may, in the circumstances of the

case, protect the interest of the revenue on the one hand and give to the petitioner opportunity to contest the demand on merits in the appeal. It is almost as a concession and not on account of any error in the impugned judgment that I am inclined to order that it will not be in the interest of either party to allow the proceedings in this Court to continue any further on the question as to whether the pre- deposit condition should be waived and the case should be disposed of on conditions as follows :

(1) The petitioners shall deposit half of the excise duty demanded within eight weeks from today and furnish security for the other half of the satisfaction of the Collector of Central Excise concerned.

(2) The respondents shall accept the said deposit as the condition for the order to keep in abeyance the demand of the penalty levied and to proceed with the hearing of the appeal on merits.

This, in my opinion, shall satisfy the interests of the petitioners on the one hand and the interest of the revenue on the other hand. The petition is disposed of with the directions as above. No costs.

8. The above decision does not lay down any principle of law and its rested on the peculiar facts involved in the case. In fact, the learned Judge had specifically observed that the order passed by the authority in that case does not suffer from any error.

9. The other decision relied on by the petitioners is the judgment of my learned Brother K. S. Bakthavatsalam, J., reported in V. C. Soundarrajan v. Collector of Customs : 1993(65)ELT358(Mad) . Instead of helping the petitioners, that decision helps the Revenue because the learned judge has categorically laid down that rights under Section 129, 129D of the Customs Act are statutory rights and such rights can be circumstances by imposing such conditions.

10. The decision reported in Akbar Balaruddin Jiwani v. Collector of customs, Bombay - : 1990(47)ELT161(SC) lays down that the Department should establish mens reas for imposition of penalty and confiscation of goods. That judgment was

rendered by the Apex Court on an appeal under Section 130(E)(b) of the Customs Act and it does not arise out of interlocutory proceedings. The question of mens rea in this case has to be established at the time of final hearing of the appeals preferred by the petitioners. Hence, this decision also does not help the petitioners.

11. The decision reported in *M/s. East India Commercial Co. Ltd., Calcutta v. Collector of Customs* - 1993 (13) E. L. T. 1342 - (A. I. R. 1893) does not apply to the facts of the present case, which dealt with the question whether breach of condition of license would amount to breach of conditions imposed by the order made under the Imports and Exports Control Act, 1947.

12. I am not able to accept the faint contention of Mr. Arvind P. Datar that the 1st respondent has failed to consider the financial hardship. A reading of the impugned order would clearly show that 1st respondent has considered all the aspects of the matter and the petitioner did not place the statement of assets and other particular relating to their financial transactions before the 1st respondent. The writ petitions have been preferred against the interlocutory order passed by the 1st respondent in exercise of powers under Section 129E of the Customs Act. The various materials considered by the 1st respondent in deciding the interlocutory applications cannot be considered as wrong. The impugned are not perverse as contended by Mr. R. Thiagarajan, learned Senior Counsel or mala fide or arbitrary to warrant interference by this Court. A mere reading of the impugned order would show that the same has been passed after due application of mind and on consideration of various relevant materials and circumstances. When such discretionary power has been exercised in accordance with the legal principles for the exercise of such powers, it is not for this court to interfere with such orders. No prima facie case has been made out in favour of the petitioners. On the contrary, as stated supra, a strong case rests in favour of the Revenue. Balance of convenience is wholly against the petitioners inasmuch as amounts due to Revenue cannot sought to be blocked from being remitted by the petitioners by taking consistent to judicial forums and seeking orders of stay.

13. The contention of the learned counsel for the petitioners that the requirements of imposition of personal penalty have not been made out cannot be decided at this stage since these are all matters for final decision by the Appellate Authority and in interlocutory stage, such question could not be looked into by this Court.

14. For the foregoing reasons, all the Writ Miscellaneous Petitions are dismissed. No costs.

Judgment was pronounced by me today. After the pronouncement of the common order in the Writ Miscellaneous Petitions, Counsel to all parties consented that the order passed by me in the Writ Miscellaneous Petitions itself may be treated as an order in the main Writ Petitions. In view of the reasons given in the order in the Writ Miscellaneous Petition, W. P. Nos. 10485, 10486, 10787, 10503, 10504, 10505, of 1993 and W. P. Nos. 11550, 11555, 115566 of 1993 are all dismissed. There will be no order as to costs. However, time for pre- deposit is extended by two months from today.

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