

Goodwill Engineering Works Vs. C.B.E. and C.

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Court : Chennai

Decided On : May-10-2000

Reported in : 2000(121)ELT599(Mad)

Judge : A. Raman, J.

Acts : [Customs Act, 1962](#) - Sections 25, 58, 65, 65(1), 66 and 88; Customs Rules; Customs Regulations

Appeal No. : Writ Petition No. 14265 of 1999 and W.M.P. Nos. 20622/99 and 6570/2000

Appellant : Goodwill Engineering Works

Respondent : C.B.E. and C.

Advocate for Def. : K. Veeraraghavan, ACGSC

Advocate for Pet/Ap. : S. Murugappan, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

A. Raman, J.

1. The petitioner was issued with a private bonded warehouse licence by the 2nd respondent. It was periodically renewed and the last renewal was on 28-7-1998. The 2nd respondent granted permission to the petitioner to manufacture boats and launches in bond under customs supervision using imported parts and raw materials, by virtue of the power vested in the 2nd respondent under Section 65 of the Customs Act. The petitioner has been availing the exemption from payment of import duty on the raw materials and parts imported from time to time as per notifications. On 22-3-1999, the 2nd respondent issued a notice under reference C. No. VIII/23/7/99, asking the petitioner to show cause why a duty of Rs. 34,98,749/- should not be imposed on certain items used in the manufacture of survey launches on the ground that they are not covered by Notification 23/98. An addendum was issued on 1-4-1999, alleging that in terms of Board's letter in F. No. 473/61/94LC, a manufacturer of goods in terms of Section 65 of the Customs Act should export at least 50% of the goods so produced and since the petitioner failed to export any item manufactured as prescribed, the benefit of exemption is not available. A suitable reply was issued by the petitioner to the same. By his proceedings dated 27-6-1999, the 2nd respondent confirmed a duty of Rs. 28,79,682/- on the ground that certain items used in the manufacture of the launches are not eligible for exemption under Notification 23/98. The petitioner therefore, preferred an appeal to the 3rd respondent against the same and the said appeal is pending. In the meantime, the petitioner applied to the 2nd respondent for renewal of the warehouse licence, which was to expire on 24-7-1999. In response to the said renewal application, the 2nd respondent issued directions to the petitioner/firm to give an undertaking to export boats/launches containing 50% of the materials to be imported or lying in the warehouse to consider renewal of the licence. The said direction is illegal, arbitrary and contrary to the provisions of the [Customs Act, 1962](#). As long as specific exemption is granted in terms of a notification issued under Section 25 of the Customs Act, the same cannot be curtailed by executive instructions. Further, the renewal of licence in terms of Section 58 of the Customs Act has nothing to do with the requirement of exports for the manufacturing options under Section 65 of the Customs Act. Hence, the Writ Petition.

2. The main contentions raised by the learned counsel for the petitioner is that the renewal for manufacture-in-bond facility cannot be denied even if no export is made. But Sections 58 and 65 of the Customs Act have to be read together.

3. Section 65 of the Customs Act reads as follows :-

'Manufacture and other operations in relation to goods in a warehouse :-

(1) With the sanction of the Assistant Commissioner of Customs and subject to such conditions and on payment of such fees as may be prescribed, the owner of any warehoused goods may carry on any manufacturing process or other operations in the warehouse in relation to such goods.

(2) Where in the course of any operations, permissible in relation to any warehoused goods under sub-section (1), there is any waste or refuse, the following provisions shall apply :-

(a) if the whole or any part of the goods resulting from such operations are exported, import duty shall be remitted on the quantity of the warehoused goods contained in so much of the waste or refuse as has arisen from the operations carried on in relation to the goods exported:

Provided that such waste or refuse is either destroyed or duty is paid on such waste or refuse as if it had been imported into India in that form.

(b) if the whole or any part of the goods resulting from such operations are cleared from the warehouse for home consumption, import duty shall be charged on the quantity of the warehoused goods contained in so much of the waste or refuse as has arisen from the operations carried on in relations to the goods cleared for home consumption.'

4. With reference to Section 65 certain guidelines and circulars are issued by the Government and one of the guidelines is dated 22-12-1995. In-bond manufacturing Sanction Order issued in favour of the petitioner is dated 24-11-1997. It provides the terms and conditions subject to which, the order of sanction has been passed. It provides that the firm shall comply with such conditions as

may be imposed by the Assistant Commissioner of Customs from time to time for carrying out the purpose of the provisions of the Customs Act, and Rules and Regulations. The permission to carry on the manufacturing operations was initially granted upto 23-11-1998. It was later renewed up to 23-11-1999 and then renewed upto 27-3-2000.

5. Under the terms and conditions, the licence holder has to apply for renewal of licence in the prescribed form at least two months before the date of expiry. In the failure to do so, no clearance shall be permissible between the period after expiry of the licence. The petitioner has not complied with this condition. The order passed in an appealable order and the statute provides specifically an appeal. But, that remedy is not pursued. The conditions of in-bonding have not been complied with by the petitioner admittedly.

6. Export has to be made of at least 50% of the raw materials. Therefore, there was an obligation on the part of the licensee to make export, which shall contain at least 50% of the materials imported viz., the raw materials lying in the warehouse under in-bonding. The petitioners goods were warehoused for the sole purpose of using the same in the manufacture of boats/launches. It is subject to the condition that he must export boats/launches containing 50% of the imported raw materials. Since that condition has not been complied with, the petitioners cannot be permitted to take advantage of his default. For the petitioner has been availing exemption from making payment of import duty. Yet, he has not chosen to comply with the condition of export. In the circumstances, the provisions viz., Sections 88, 65 and 66 have to be read together. Therefore, I am of the view that the petitioner cannot claim any benefit. Nor there are any grounds made out to quash the order dated 9-8-1999. The order dated 9-8-1999 is neither arbitrary nor capricious. It is an order in accordance with the terms and conditions of the licence and in the background of the provisions of the Customs Act viz., under Sections 58, 65 and 66. Therefore, the authorities were justified in asking for an undertaking from the petitioner to export boats/launches containing 50% of the raw materials to be imported and that are lying in the warehouse. It is open to the authorities therefore to insist upon such an undertaking before ever taking up for consideration the request for renewal. Hence, the impugned proceedings cannot be challenged as

ultra vires or invalid. If the petitioner wants to apply for renewal, he has to comply necessarily with the conditions. The petitioner cannot enrich himself unjustly. Hence, I have to hold that there is no merit in this Writ Petition.

7. In the result, the Writ Petition is dismissed. No costs. Consequently, the connected WMPs will stand closed.

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