THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION NOs.9572 AND 9582 OF 2006

COMMON ORDER: {Per the Hon'ble Sri Justice Ramesh Ranganathan}

In both these Writ Petitions, the first petitioner is a public limited company carrying on business in the manufacture of bulk drugs, and the second petitioner is a shipping agent of the first petitioner for clearance and transportation of imported methanol. The second respondent is said to have imported methanol from Saudi Arabia and, before the goods crossed the customs frontier at Visakhapatnam, a part of the imported consignment was sold to the first petitioner herein. It is the petitioners' case that, as Visakhapatnam port lacked the facility to store methanol, and as the petitioner is a company carrying on business in the State of Tamilnadu, they were permitted to transport the entire quantity, of methanol purchased by the 1st petitioner, from the Customs warehouse at Visakhapatnam to the Customs warehouse at Chennai.

Sri Bhaskar Reddy Vemireddy, learned counsel for the petitioner, would draw attention of this Court to the certificate issued by the Superintendent of Customs (bonds), Visakhapatnam wherein it is stated that the entire quantity of methanol under bond was being transferred to another bond at 100% EOU under the Customs Act; customs dues were pending final assessment; no duty was yet paid on the cargo of the entire quantity; and the said cargo belonged to the Government of India on all legal terms. Learned counsel would also draw our attention to the certificate of procurement and movement of imported goods without payment of duty, wherein it is recorded that the petitioner had executed a B 17 bond for Rs.15 crores with the Assistant Commissioner of Central Excise on 22.04.2004; the licensee (petitioner) was authorised to obtain methanol from the Deputy Commissioner of Customs for the manufacture of bulk drugs in their factory; and they may be allowed to obtain the imported goods at nil rate of duty. The petitioner also appears to have executed a bond under Section 59(1) of the Customs Act, 1962, and to have obtained a bill of entry for warehousing. Copies of all these documents are filed along with the Writ Petition.

The subject goods were detained, and while a show cause notice for confiscation was issued in W.P. No.9572 of 2006, an order of confiscation was passed in W.P. No.9582 of 2006. In the order of confiscation, the Commercial Tax Officer records that, in terms of Rule 33 of the Andhra Pradesh Value Added Tax Rules, the documents specified therein were not accompanied with the vehicle and, as such, the goods were liable for confiscation under Section 45(7)(b) of the A.P. VAT Act. An elaborate order was passed by him on 15.04.2006. Questioning both the aforesaid proceedings, the petitioner invoked the jurisdiction of this Court and, by way of an interim order passed on 02.05.2006, this Court directed release of the goods on the petitioner furnishing a bank guarantee, drawn on a nationalised bank, in terms of the seizure-cum-confiscation show cause notice.

Sri Bhaskar Reddy Vemireddy, learned counsel for the petitioner, would refer to Sections 59 and 67 of the Customs Act, and to the Warehoused goods (Removal) Regulations made under Section 157 of the Customs Act, in support of his contention that the goods, being transported from Visakhapatnam Customs Warehouse to Chennai Customs Warehouse, continued to remain the property of the Government of India; Rule 33 of the Andhra Pradesh Value Added Tax Rules is inapplicable; the petitioner was directed to furnish a bond of Rs.15 crores for transportation of the goods from Visakhapatnam Customs Warehouse to Chennai Customs Warehouse; after the goods were warehoused at Chennai, the petitioner was then required to comply with the provisions of the Customs Act, and the Rules and Regulations made thereunder, for release of the goods for home consumption; and, in such circumstances, none of the provisions of the Andhra Pradesh Value

Added Tax Act or Rule 33 of the VAT Rules, are attracted. He would further submit that, since the petitioner is a 100% EOU, they are not liable to pay customs duty also.

Section 59 of the Customs Act, 1962 relates to warehousing bond and, thereunder, the importer of any goods specified in sub-section (1) of Section 61, which have been entered for warehousing and assessed to duty under Section 17 or 18 shall execute a bond binding himself in a sum equal to twice the amount of the duty assessed on such goods (a) to observe all the provisions of the Customs Act, and the rules and regulations in respect of such goods; and (b) to pay, on or before a date specified in a notice of demand, all duties, and interest, if any, payable under sub-section (2) of Section 61. Section 59(3) stipulates that a bond, executed under Section 59 by an importer in respect of any goods, shall continue in force notwithstanding the transfer of the goods to any other person or the removal of the goods to another warehouse. Under the proviso thereto, where the whole of the goods, or any part thereof, are transferred to another person, the proper officer may accept a fresh bond from the transferee in a sum equal to twice the amount of duty assessed on the goods transferred, and thereupon the bond executed by the transferor shall be enforceable only for a sum mentioned therein less the amount for which a fresh bond is accepted from the transferee. Section 67 of the Customs Act relates to removal of goods from one warehouse to another and, thereunder, the owner of any warehoused goods may, with the permission of the proper officer, remove them from one warehouse to another, subject to such conditions as may be prescribed for the due arrival of the warehoused goods at the warehouse to which removal is permitted. Section 68 relates to clearance of warehoused goods for home consumption and, thereunder, the importer of any warehoused goods may clear them for home consumption if (a) a bill of entry for home consumption in respect of such goods has been presented in the prescribed form; (b) the import duty leviable on such goods and all penalties, rent, interest, and other charges payable in respect of such goods, have been paid; and (c) an order for clearance of such goods for home consumption has been made by the proper officer. Under the first proviso thereto, the owner of any warehoused goods may, at any time before an order for the clearance of the goods for home consumption has been made in respect of such goods, relinquish his title to the goods upon payment of rent, interest, other charges and penalties that may be payable in respect of the goods and, upon such relinquishment, he shall not be liable to pay duty thereon.

In exercise of the powers conferred by Section 157 of the Customs Act, 1962, the Central Board of Revenue made the Warehoused Goods (Removal) Regulations, 1963. Regulation 2 thereof stipulates, that, where the goods are to be removed from one warehouse to another in the same town, the proper officer may require that the transport of the goods between the two warehouses be under the supervision of an officer of Customs, the owner meeting the cost of such supervision. Regulation 3 prescribes conditions for transport of warehoused goods to another town and, thereunder, where the goods are to be removed from one warehouse to another in a different town, the proper officer may require the person, requesting removal, to execute a bond in a sum equal to the amount of import duty leviable on such goods, and in such form and manner as the proper officer deems fit. Regulation 4 prescribes the terms of the bond to be executed and, thereunder, the terms of the bond shall be that, if the person executing the bond produces to the proper officer within three months or within such extended period as such officer may allow, a certificate issued by the proper officer, at the place of destination, that the goods have arrived at that place, the bond shall stand discharged, but otherwise an amount equal to the import duty leviable on the goods, in respect of which the said certificate is not produced, shall stand forfeited.

Rule 33 of the A.P. VAT Rules prescribes the records to be maintained by clearing/forwarding agents and, under sub-rule (1) thereof, when the goods are transported after clearance from a seaport, on behalf of a dealer not registered under the Act, the clearing or forwarding agent, as the case may be, notwithstanding that such agent is not a dealer registered under the Act or any other person in charge of the goods vehicle or vessel, who, on behalf of such agent or importer transports the goods from the seaport, shall carry with him the required documents in respect of the goods carried in the goods vehicle or vessel. Rule 33 (1) stipulates the documents to be carried in the vehicle in which the goods are transported after its clearance, from a seaport, for home consumption.

In accordance with the provisions of the Customs Act, and the Regulations as noted hereinabove, the subject goods were transported from the Customs Warehouse at Visakhapatnam to the Customs Warehouse at Chennai. It is only after the goods were transported to Chennai Warehouse was the petitioner, then, required to submit a bill of entry for home consumption in terms of Section 68 of the Customs Act, and to have obtained clearance of such goods for home consumption from a proper officer in terms of Section 68 (c) of the Act. It is only after the goods were cleared for home consumption and, in case they were transported from one State to another, would Rule 33 of the A.P. VAT Rules have been applicable. As the subject goods were transported from a Customs Warehouse in one State to another Customs Warehouse in another State, the goods under transportation continued to remain the property of the Central Government. The A.P. VAT Rules do not seem to specifically provide for the documents to be carried in the vehicle carrying goods from one Customs Warehouse to another in a different State.

That, however, does not absolve the petitioner of their obligation to satisfy the first respondent that the subject goods were, subsequently, lodged at the Customs Warehouse at Chennai; and they had, thereafter, obtained from a proper officer, in terms of Section 68(c) of the Customs Act, clearance of such goods for home consumption. As the petitioners' bank guarantee is said to be still in force as on date, we consider it appropriate to set aside the impugned order of confiscation, and permit the petitioner to produce documentary evidence to show that the goods, which were sought to be confiscated, were later delivered at the Customs Warehouse, Chennai and, thereafter, approval of the Customs Officer, for clearance of the goods for home consumption, was obtained. The bank guarantee furnished by the petitioner shall be kept in force for a further period of six months from today. The petitioner shall, within six weeks from today, furnish documentary evidence to show that the goods, which were sought to be confiscated, were subsequently delivered at the Customs Warehouse, Chennai and were thereafter cleared, in accordance with Section 68 of the Act, for home consumption either on payment of duty or on duty being exempt for a 100% Expert Oriented Unit. The entire exercise, culminating in fresh orders being passed, shall be completed within four months from today. It is open to the first respondent thereafter, if need be, to take further action in accordance with law.

Both the Writ Petitions are disposed of accordingly. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

(RAMESH RANGANATHAN, J)

(M.SATYANARAYANA MURTHY, J)

4th April 2016
RRB