IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.01.2017

Coram

The Hon'ble Mr.Justice P.N.Prakash

Writ Petition No.19116 of 2003
and
W.P.M.P.No.23908 of 2003

Saky Systems and Electronics Pvt. Ltd.,
New No.283, TTK Road,
Yaas Towers, III rd Floor,
Chennai - 600 018. ...Petitioner

Vs.

1. The Commissioner of Customs,
Custom House,
No.33, Rajaji Salai,
Chennai - 600 001.

2. The Assistant Commissioner of Customs,
Bonds Department,
Custom House,
No.33, Rajaji Salai,
Chennai - 600 001.

3. The Chief Accounts Officer,
Custom House,
No.33, Rajaji Salai,
Chennai - 600 001. ...Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for records pertaining to the impugned demand notice, dated 27.06.2003 issued by the third respondent in F.No.S13/12/02/Accts. and to quash the same as illegal.

For Petitioner : Mr.S.A.Sayed Shuhaibb
For Respondents : Mr.S.Rajasekar
Senior Panel Counsel for
Customs, Central Excise and
Service Tax Department

O R D E R

The challenge in this Writ Petition is to the notice issued by the third respondent/Chief Accounts Officer, Custom House, Chennai, dated 27.06.2003, whereby, the petitioner has been demanded to pay a sum of Rs.2,04,350/- towards cost recovery charges.

2. The petitioner is engaged in the business of importing old mobile phones from other Countries, and after carrying out the repair works in their Unit, re-export them to other Countries. Since import and export is involved in the business activities of the petitioner, the petitioner was required to obtain a Private Bonded Warehouse Licence from the Commissioner of Customs. On his application, the Commissioner of Customs had granted licence, bearing No.P717, dated 17.10.2002, and at this stage, it may be beneficial to refer to the relevant portion of the licence, which is extracted herein below:-

> " The licence is granted to M/s.Saky Systems and Electronics Private Limited, Yass Tower (Basement) 283, TTK Road, Alwarpet, Chennai- 600 018. It is not transferable to any persons and will remain in force for a period from 17.10.2002 to 17.10.2003, unless, specifically, revoked before the expiry of the period under Section 58 (2) of the Customs Act, 1962. The under mentioned godown being the property of Smt.S.H.Yasmin Begum, w/o T.S.T.Kaznavi, 7, Sullivan Street, Santhome, Chennai - 600 004, is hereby licenced under Section 58 (1) of the Customs Act, 1962, as a private bonded warehouse for storage of parts and accessories of Cellular/Mobile Phones, without payment of duty on the first importation thereof subject to the conditions prescribed on the reverse. The godown is situated at a distance of about 9 kms from the custom house."

3. Pursuant to the afore mentioned licence, dated 17.10.2002, the petitioner was required to execute a bond in terms of Warehouse Regulation 1996 and condition No.6 of the bond states as follows:-

> "The unit shall also pay the establishment charges, i.e., pay and allowances (if any) and other supervision charges of the staff members that may be posted or deputed to the unit and the establishment charges are to be paid in advance for three months at a time and the

same shall be paid within one week after receiving the notice of payment from the Assistant Commissioner's Office"

4. The petitioner accepted the said condition, and carried on his business activities under the supervision of the Customs Authorities. The petitioner was called upon to pay the cost recovery charges for the period from 13.09.2002 to 17.10.2003, to the tune of Rs.3,34,546/- towards which, the petitioner has paid Rs.1,30,196/- in two installments, and refused to pay balance of Rs.2,04,350/-, on the ground that the Authorities should issue demand notice. The Authorities issued a demand notice, dated 27.06.2003, challenging which, the petitioner has filed the present Writ Petition.

5. Heard Mr.Sayeed Shuhaibb, the learned counsel for the petitioner and Mr.S.Rajasekar, learned Senior Panel Counsel for respondent/Customs Department, and perused the materials placed on record.

6. The learned counsel for the petitioner placed strong reliance upon the circular, dated 23.04.2003 issued by the Central Board of Excise and Customs, wherein, it is stated as follows :-

> "It has been observed by the Board that eventhough the aforesaid circular does not envisage any physical supervision ofsuch storage premises/godown by the Central Excise, the field formations are still collecting merchant overtime charges/charges on cost recovery basis as per earlier concept of physical supervision of godowns/storage places in terms of Board's circular No.261/33A/86-CX.8, dated 14.04.1986.
> The matter has been examined. It is the view of the Board that in current era of liberalization and simplification of law and procedures the emphasis is on self-assessment by the assessee. Therefore, the recovery of merchant overtime charges in such cases are no longer warranted. The jurisdictional Commissioner shall however, impose any other condition which he deems fit for the safeguard of revenue before granting permission for storage of non-duty paid excisable goods outside factory premises of the assessee. "

7. The learned counsel further submitted that the Customs

Department cannot claim any such charges, because, they do not have any establishment or Office in the Unit of the petitioner.

8. Refuting the said contention raised by the learned counsel for the petitioner, the learned Senior Panel Counsel for respondent/Customs Department has drawn this Court's attention to the counter affidavit filed by the Deputy Commissioner of Customs, dated 27.01.2004, wherein, in para No.7, it is stated as follows:-

> " The averments contained in para 8 are denied. It is incorrect to state that the petitioner is not liable to pay cost recovery charges and it is wrong to state that the petitioner has not set put any establishment. Writ Petitioner was granted warehouse licence and inbond manufacturing sanction order under Section 58 (I) and 65of Customs Act, 1962 on condition that manufacturing operation should be carried out under the supervision of Customs Officer. This is contained in condition No.4 of Inbond Manufacture Sanction Order. As per the condition No.5 and 6 of the said order '' the Unit shall provide all facilities such as office, transport, accommodation etc., to the Officer posted and also pay establishment charges, i.e. pay and allowance (if any) and other supervision charge of the staff members that may be posted or deputed to the unit. The method of calculation of recovery of cost for the post created on cost recovery basis are instructed in Ministry's letter, dated 01.04.1991 in F.No.A-11018/9/91-Ad.IV and letter, dated 19.10.1994 in F.No.A-11018/12/92-Ad.IV. As per these letters, the cost recovery amount has to be recovered from the parties at the uniform rate of 1.85 times of the monthly average cost of post plus DA, CCA, HRA Etc., from 1.1.2003, 1.85 times of the average pay for one preventive officer is Rs.25,554/- per month. Accordingly, from 13.09.2002 to 17.10.2003, the unit has to pay to the Government a total of Rs.3,34,546/- M/s.,Saky systems have paid a part amount of Rs.1,30,196 in two installments, towards cost recovery charges. They failed to pay the balance amount in time and hence, the Department issued a demand notice, dated 27.06.2003 asking them to pay the due amount of Rs.2,04,350/-. Hence, the demand notice,

dated 27.06.2003 issued by the Department is legally correct and sustainable.”

9. This Court gave its anxious consideration to the rival submissions. The petitioner was given a Private Bonded Wareouse Licence, dated 17.10.2002, with a condition that they should pay the establishment charges, i.e., pay and allowances, if any, and other supervision charges of the staff members of the Customs Department. Subject to the said proviso only, the petitioner was given the Private Bonded Warehouse Licence. Therefore, it is not open to the petitioner to repudiate the same or resile from their obligation, and say that they will not make payment.

10. Admittedly, an Officer of the Customs was posted in the establishment of the petitioner for supervising the activities and to ensure that the petitioner does not commit any violation of the provisions of the Customs Act and Rules, as per the circular of the Ministry, dated 19.10.1994, the Government has stipulated that, the parties should pay uniform rate of 1.85 times of the monthly average cost of post plus DA, CCA, HRA Etc., from 1.1.2003, as establishment charges to the Customs Department. Only in terms of the aforesaid Government letter, the Chief Accounts Officer of the Customs Department has raised a demand of Rs.3,34,546/-. Admittedly, the petitioner has paid Rs.1,30,196/- in two installments, but refused to pay the balance of Rs.2,04,350/- on specious grounds. As regards the contention of the petitioner that they need not have to pay any amount in view of the circular, dated 23.04.2003, this Court finds the said contention as untenable, as the said Circular was issued by the Central Excise Department and not by the Customs Department, wherein, rules are totally different.

11. Therefore, this Court does not find any merit in the claim of the petitioner that they are not liable to make any payment to the Customs Department towards establishment charges.

12. In the result, the Writ Petition is dismissed as being devoid of merits. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Commissioner of Customs,
   Custom House,
   No.33, Rajaji Salai,
   Chennai - 600 001.

2. The Assistant Commissioner of Customs,
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3. The Chief Accounts Officer,
   Custom House,
   No.33, Rajaji Salai,
   Chennai - 600 001.

+1cc to Mr.S. Rajasekar, Advocate, S.R.No.2762
+1cc to Mr.Hari Radhakrishnan, Advocate, S.R.No.3418

ala(CO)
md(06/02/2017)

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