

HONOURABLE SRI JUSTICE SANJAY KUMAR
AND
HONOURABLE SRI JUSTICE P.KESHA RAO

WRIT PETITION NOS.25098, 25477 AND 25486 OF 2018

COMMON ORDER

The Assistant Commissioner of Customs (Group-7), office of the Commissioner of Customs (Airport & Air Cargo), Chennai, the first respondent, passed three separate orders on 09.10.2014. Thereby, he held that M/s.Hetero Labs Limited, Hyderabad, had violated Condition (ix) of Customs Notification No.96 of 2009 dated 11.09.2009 and levied upon it duty along with interest thereon, aggregating to Rs.16,00,00,000/-.

2. Aggrieved thereby, M/s.Hetero Labs Limited, Hyderabad, came before this Court. W.P.No.25098 of 2018 was filed by it against Order-in-Original No.701 of 2014 dated 09.10.2014, whereby it suffered duty of Rs.5,00,00,000/- with interest thereon from 09.02.2010. W.P.No.25477 of 2018 was filed by it against Order-in-Original No.702 of 2014 dated 09.10.2014 visiting upon it duty of Rs.5,00,00,000/- with interest from 29.01.2010. Lastly, W.P.No.25486 of 2018 was filed by it against Order-in-Original No.700 of 2014 dated 09.10.2014, whereunder it suffered duty of Rs.6,00,00,000/- with interest thereon from 05.01.2010.

3. Interim orders were passed in all three writ petitions directing the customs authorities not to take any coercive steps.

4. Heard Sri C.V.Narasimham, learned counsel for the petitioner, and Sri Swaroop Oorilla, learned counsel for the customs authorities.

5. At the outset, Sri Swaroop Oorilla, learned counsel, would contend that this Court has no jurisdiction as the impugned orders were passed at Chennai. We advert to this contention only to reject it. The documents placed on record indicate that export obligations were discharged by the

petitioner even at Hyderabad, through the local international airport. Once a part of the cause of action arose within the territories falling within the jurisdiction of this Court, it is for the petitioner to choose which High Court it would approach as territorial jurisdiction vested in more than one Court. The decision in KUSUM INGOTS & ALLOYS LIMITED V/ s. UNION OF INDIA¹ is therefore of no avail to the learned counsel.

6. We may however note that the orders impugned in these cases were passed in October, 2014 but it was only in May, 2018 that these writ petitions were filed before this Court. Further, the orders in question were appealable under Section 128 of the Customs Act, 1962. These two aspects are also stressed upon by Sri Swaroop Oorilla, learned counsel, to support his contention that we should non-suit the petitioner on these technicalities. Refuting this argument, Sri C.V.Narasimham, learned counsel, would point out that it was only in March, 2018, that the customs authorities informed the petitioner about the duty arrears due from it and of the existence of the orders passed on 09.10.2014.

7. We find from the record that the petitioner then informed the first respondent, *vide* letter dated 16.03.2018, that it had completed its export obligations and that there was no violation as held in the impugned orders. In turn, the first respondent replied to the petitioner, *vide* letter dated 28.03.2018, stating that the impugned orders had been dispatched to its address at Hetero House, H.No.8-3-166/7/1, Erragadda, Hyderabad, by speed post and there was no record of the same having been returned undelivered. According to the petitioner, it never received any show-cause notices prior to and in connection with the impugned orders or the alleged personal hearing notices said to have been sent by the first respondent.

¹ 2004 (168) E.L.T. 3 (S.C.)

Further, it claimed that the impugned orders were never served upon it until copies thereof were sent by the first respondent under the letter dated 28.03.2018.

8. The petitioner asserted that its registered office was at Hetero House, H.No.8-3-166/7/1, Erragadda, Hyderabad, till August, 2009 and thereafter, it shifted to its present office at Hetero Corporate, Door No.7-2-A2, Industrial Estate, Sanath Nagar, Hyderabad. Form 18 was filed by it with the Registrar of Companies in this regard. The changed address was also mentioned in all correspondence, shipping bills and bills of entry available with the first respondent. The petitioner pointed out that in spite of the same, the first respondent chose to send the notices, communications and the impugned orders to its old address.

9. Sri Swaroop Oorilla, learned counsel, has no explanation to offer for this lapse on the part of the first respondent.

10. Perusal of the material on record bears out that the customs authorities themselves issued bills of entry with the new address of the petitioner. Further, the petitioner also complied with the legal requirement of filing Form 18 with the Registrar of Companies about its changed address. In such circumstances, the failure on the part of the authorities to communicate with the petitioner at the correct address and inability to show evidence of the impugned orders being served upon the petitioner come to its aid. We may note that the petitioner's right of statutory appeal was time bound and stood stultified by the authorities own lapses.

11. Reliance placed by Sri Swaroop Oorilla, learned counsel, on HINDUSTAN APPAREL INDUSTRIES V/ s. ASSISTANT COMMISSIONER OF CUSTOMS (EPCG), CHENNAI², with regard to

² 2015 (323) E.L.T. 344 (Mad.)

the statute being a complete code in so far as the statutory appellate remedy thereunder is concerned, does not further the case of the authorities as the petitioner was effectively denied the right of appeal owing to their mistake in not communicating with it at the right address.

12. Further, in terms of the Full Bench Judgment of the High Court at Hyderabad for the State of Telangana and the State of Andhra Pradesh in *ELECTRONICS CORPORATION OF INDIA LIMITED V/ s. UNION OF INDIA*³, reiterating and affirming the *ratio* of the Full Bench decision of the Gujarat High Court in *PANOLI INTERMEDIATE (INDIA) PRIVATE LIMITED V/ s. UNION OF INDIA*⁴, a writ petition can be preferred to challenge an order passed by the original adjudicating authority, who acted in flagrant disregard to law or rules or procedure or in violation of the principles of natural justice.

13. We are therefore not inclined to non-suit the petitioner on the grounds of delay and availability of an alternative remedy.

14. The issue pertains to the imports made by the petitioner during the financial year 2010-2011. The Foreign Trade Policy, 2009-2014, permitted a manufacturer of excisable goods to import raw materials, packaging materials and consumables without payment of customs duty by obtaining an advance authorisation from the Director General of Foreign Trade, Government of India, subject to conditions. Notification No.96/2009-Cus. dated 11.09.2009 was issued by the Ministry of Finance, Government of India, granting exemption from payment of customs duty on such imported materials. Condition (ix) therein stipulated that such an importer must produce evidence of discharge of its export obligations to the satisfaction of the Deputy Commissioner of Customs or the Assistant

³ 2018 (361) E.L.T. 22 (A.P.)

⁴ 2015 (326) E.L.T. 532 (GUJARAT)

Commissioner of Customs within a period of sixty days of the expiry of the period allowed for fulfilment of such export obligations or within such extended period as may be allowed by the customs authorities.

15. It is an admitted fact that the petitioner obtained Advance Authorizations bearing Nos.0910040870, 0910040652 and 0910040522 in January/February, 2010 from the Assistant Director General of Foreign Trade, Hyderabad Regional Office, for duty-free import of raw materials for use in the manufacture of its finished products for export. The export obligations in this regard were to be fulfilled within three years from the date of issuance of such advance authorizations. It is an admitted fact that the petitioner completed and complied with its export obligations as per the aforesaid condition within the stipulated period of three years. However, the redemption certificates in proof of fulfilment of such export obligations by the petitioner were issued and filed belatedly.

16. As regards the Advance Authorization bearing No.0910040870, the redemption certificate was issued on 24.07.2014. In relation to the Advance Authorization bearing No.0910040652, the redemption certificate was issued on 06.05.2013. Lastly, apropos the Advance Authorization bearing No.0910040522, the redemption certificate was issued on 05.03.2015. As Condition (ix) of Notification No.96 of 2009 required submission of these redemption certificates within sixty days from the expiry of the period allowed for fulfilment of the export obligations and as the petitioner could not submit the same within the said period owing to the delay on the part of the issuing authority, the first respondent is now choosing to penalise the petitioner by raising duty demands with interest thereon for failure to comply with Condition (ix), referred to *supra*.

17. Significantly, it is not the contention of the customs authorities that the delay in issuance of the redemption certificates was attributable to the petitioner. It was therefore for the authorities themselves to put in place necessary machinery to see that such certificates were issued promptly, so that they could be produced within the time stipulated in Condition (ix) of Notification No.96 of 2009 dated 11.09.2009. An importer who duly complied with such export obligations in terms of the exemption granted under the Foreign Trade Policy cannot be penalised for delay on the part of the authorities in processing the necessary documentation.

18. Given the aforestated admitted facts, we find that the first respondent adopted a tediously hidebound approach in dealing with the matter. According to the petitioner, the fact that it had discharged its export obligations would have been well within the knowledge of the customs authorities themselves and all that the first respondent had to do was to cross verify the factum of such compliance even if the petitioner failed to appear before him. We find merit in this submission.

19. In MOTIRAM TOLARAM V/ s. UNION OF INDIA⁵, the Supreme Court pointed out that when an assessee wants to claim the benefit of an exemption notification, the onus is upon him to prove and show that the conditions imposed by the said exemption notification have been satisfied. We are of the opinion that when this aspect is not even in dispute presently, it is not open to the first respondent to brush aside the reality of the situation and penalize the petitioner.

20. On the above analysis, we find that Order-in-Original Nos.701, 702 and 700 of 2014 dated 09.10.2014 are unsustainable on facts and in law and they are accordingly set aside. The writ petitions are allowed. Pending

⁵ 1999 (112) E.L.T. 749 (S.C.)

miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

JUSTICE SANJAY KUMAR

JUSTICE P.KESHAVA RAO

2nd AUGUST, 2019

PGS

