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MIHIR TEXTILES LTD. ETC.

v.

COLLECTOR OF CUSTOMS, BOMBAY ETC.

APRIL 29, 1997

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[SUHAS C. SEN AND K.T. THOMAS, JJ.]

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Customs Tariff Act, 1975—Entry No. 84.66—Entitlement to concessional relief in payment of customs duty—Non-compliance of conditions necessary for such entitlement—Contract not registered before passing of the order permitting clearance of the goods from the port—Held, appellants not entitled to concessional relief.

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The appellant in one case, had imported 12 Air Jet Looms along with their accessories and goods. He got them cleared on payment of full duty. After that he applied to the Collector of Customs for granting registration of his contract with the buyer as envisaged in Entry No. 84.66 of Customs Tariff Act, 1975. Then he filed a refund application on the premise that he is liable to pay customs duty only at the concessional rate. The claim for refund was rejected by the Assistant Collector. On appeal, the Collector held in favour of the appellant. However, the Customs, Excise and Gold (Control) Appellate Tribunal (CEGAT) restored the Assistant Collector's order.

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In the other case, the appellant got imported licence for importing "Sandzimar Planatory Mill". After that, he contractor with a foreign seller at Sweden to despatch the foresaid Mills. He wrote a letter to the Government requesting that the licence might be endorsed for "Project Import". He got cleared the imported goods on payment of full duty. He got the required endorsement and then made an application for refund of the duty on the premise that he was liable to pay customs duty only at the concessional rate. Assistant Collector of Customs, Collector of Customs and CEGAT rejected the claim. Hence these appeals.

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Both the appellants claimed that they had done their part in obtaining the registration of the import contract as a project import and it was quite improper to have denied the benefit of the concessional relief prescribed in Entry No. 84.66 to the importers. They added that non-compliance of the conditions was only due to the lapses on the part of the

authorities concerned.

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Dismissing the appeal, this Court

HELD : 1. The proviso to Entry No. 84.66 of Customs Tariff Act, 1975 prescribes, principally, three conditions to be satisfied for entitlement of concession and they are (1) goods should have been imported against a specified contract registered with the appropriate Customs House; (2) such registration should have been made in the manner prescribed by the regulations; (3) registration of the contract should have been obtained before passing of the order granting permission for clearance of the goods. In the instant cases, the contracts were not registered at all before the order of clearance was passed. [1092-B-C]

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2. In one case, no application was made for registration of the contract before the goods were cleared. In the other case the appellant did send a letter to the Ministry of Industry. Even if the letter is treated as application, there are two circumstances which go against the appellant. First, though he got the licence he did not make the application for almost six months thereafter. Second, the letter which is claimed to be an application was sent only a month before clearance of the goods and during the remaining period he could not expect the Central Government to rush through all the formalities necessary for granting registration. [1092-E-H; 1093-A-B]

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SB International Ltd. & Ors. v. Assistant Director General of Foreign Trade and Others, [1996] 2 SCC 439, referred to.

3. There is no legal foundation for both the appellants to secure the relief prescribed in Entry No. 84.66. [1095-B]

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 756 of 1987 Etc.

From the Judgment and Order dated 31.7.86 of the Customs Excise, Gold (Control) Appellate Tribunal, New Delhi in CD (SB) A.No. 458 of 1985-B-2.

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(Bhaskar Raj Pradhan) for Mrs. M. Karanjawala, S. Ganesh, Amit Bansal, N.K. Bajpai and V.K. Verma for the appearing parties.

The Judgment of the Court was delivered by

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A THOMAS, J. In both these appeals the question involved is regarding the relief entitlement of the claimants to customs duty payable at the time of clearance of the imported commodities. Under Entry No. 84.66 of the Customs tariff all items of machinery, including industrial plant, can get clearance on payment of a concessional rate of 40%, if the goods are imported under certain conditions against specified contract registered with the Customs House. The grievance of the appellants herein is that such relief was not granted to them.

C Appellant in one of these appeals had imported 12 Air Jet Looms along with their accessories and the goods arrived at the Bombay Port on 18.3.1983. Appellant got them cleared from the port on 31.3.1983 on payment of full duty which was a little above 52 lacs of rupees. On 13.4.1983 he applied to the Collector of Customs for granting registration of his contract with the buyer as envisaged in Entry No. 84.66 of the Customs Tariff and he got the registration on 22.4.1983. Then he filed a refund application on the premise that he is liable to pay customs duty at the concessional rate shown in the aforesaid entry. But the claim for refund was rejected by the Assistant Collector and then he filed an appeal before the Collector of Customs (Appeal) and got order of the Assistant Collector set aside holding that appellant is entitled to refund. However, the department filed a further appeal before Customs, Excise & Gold (Control) Appellate Tribunal (CEGAT) and as per the order impugned before us CEGAT restored the Assistant Collector's order.

F The main contention in the aforesaid appeal is that application for registration could not be made to the Collector of Customs before he got clearance of the goods from the port since he could get the recommendation from the Textile Commissioner only by 7.4.1983. Thus, for no fault on his part he could not avail himself of the concessional duty at the time of clearance.

G The position in the other appeal is slightly different and the facts are, in brief, these. Appellant therein got import licence on 22.10.1980 for importing "Sandzimar Planatory Mill". On the strength of the said import licence he contracted with a foreign seller at Sweeden to despatch the aforesaid Mill. On 20.3.1981 he addressed a letter to the Government requesting that the licence might be endorsed for "Project Import" When H the imported goods arrived at Bombay Port in April 1981 he got them

cleared by payment of full duty (which is a little less than 20.5 lacs rupees). Appellant got the required endorsement on 14.8.1981 and then he made an application for refund of the duty paid by him. The application was made on the premise that he was liable to pay customs duty only at the concessional rate prescribed under Entry No. 84.66 of the Customs Tariff. Assistant Collector of Customs rejected his refund claim on the main ground that he had not obtained registration of the import contract as "a Project Import". Appellant filed an appeal before Collector of Customs (Appeal) and when that was rejected he went before CEGAT in further appeal and that too was dismissed by the impugned order.

The contention adopted by both the appellants is identical, that as they had done their part in obtaining the registration of the import contract as a project import it was quite improper to have denied the benefit of the concessional relief prescribed in Entry No. 84.66 to importers.

For appreciating the said contention it is necessary to extract the aforesaid Entry 84.66 herein (only material portion).

"84.66 (I) All items of :

(a) Machinery, including prime movers,

(b) Instruments, apparatus and appliances,

(c) Control gear and transmission equipment,

(d) Auxiliary equipment, as well as all components (whether finished or not) or raw materials for the manufacture of the aforesaid items and their components, required for the initial setting up of a unit, or the substantial expansion of an existing unit, of a specified :

(1) industrial plant,

Provided these are imported (where in one or in more than one consignment) against one or more specific contracts which have been registered with the appropriate Customs House in the manner prescribed by Regulations which the Central Board of excise and Customs may make under section 157 of the Customs Act, 1962 (52 of 1962) and such contract or contracts has or have

A been so registered before any order is made by the proper officer of Customs permitting the clearance for home consumption, or deposit in the warehouse of items, components of raw materials."

B The proviso prescribes, principally, three conditions to be satisfied for entitlement of the concessional rate shown in the aforesaid entry. They are - (1) Goods should have been imported against a specified contract registered with the appropriate Customs House; (2) Such registration should have been made in the manner prescribed by the regulations; (3) Registration of the contract should have been obtained before the order (granting permission for clearance of the goods) was passed. Unless all the three conditions are satisfied, no importer can claim, as a matter of right, the concessional relief provided in the entry. In these cases the contracts were not registered at all before the order of clearance was passed. That fact is not disputed before us and as the appellants were aware of position they chose to pay full customs duty for making the clearance.

C Learned counsel contended that the importer is not to be blamed for non-compliance with the conditions prescribed in the entry because all what should have been done on their part had been done by them and what remained to be done was only that part which the authorities had to do in the matter. Obviously the aforesaid contention has no legs to stand at least in one case wherein no application was made at all for registration of the contract before goods were cleared.

D In the other appeal it was submitted on behalf of the appellant that as a matter of fact the appellant had made the application before the goods arrived at the port. Counsel for the appellant invited our attention to a letter which appellant has addressed to "Ministry of Industry, Udyog Bhawan, Maulana Azad Raod, New Delhi" as proof of such application. Learned Additional Solicitor General contended that the said letter could not be treated as the application contemplated in the proviso to Entry 84.66, as the ministry of Industry is not the prescribed authority for granting registration.

E Even assuming that the said letter should have been treated as the application contemplated in the proviso can the appellant legally claim the relief of concessional duty? Two circumstances have been highlighted against his claim. First is that though the appellant got the import licence on 22.10.1980 he did not make any application for registration for almost

six months thereafter. Second is that even the letter which he claims to be the prescribed application was sent only a month before clearance of the goods from the port and during the remaining period he could not expect the Central Government to rush through all the formalities necessary for granting registration. If any hasty steps were adopted on the application the resultant order would have been vulnerable to be assailed as an act done with undue haste. In this context learned Additional Solicitor General referred us to the following observations made by Jeevan Reddy, J. in *S.B. International Ltd. & Others v. Assistant Director General of Foreign Trade & Others*, [1996] 2 SCC 439 :

"On receipt of the application, the authorities have to satisfy themselves about the correctness of the contents of the application. They also have to satisfy themselves that the application satisfies all the requirements of the scheme and the other applicable provisions of law, if any. In a country like ours, where abuse of such facilities is rampant, reasonable time has to be afforded to the authorities to process the application. What is a reasonable time, of course, depends on the facts of each case. No hard and fast limit can be prescribed."

Learned counsel for the appellants raised an alternative contention that the deficiency in the contract for obtaining the concessions should not have been taken so seriously and the Customs Authorities should have granted the reliefs as the appellants had performed their part in complying with the conditions. Non-compliance of the conditions, according to the counsel, was only due to the lapses on the part of the authorities concerned. This contention was expatiated to the extent that the conditions prescribed in the proviso to entry No. 84.66 are merely directory and not mandatory. According to the counsel, the conditions prescribed, if interpreted strictly, would result in the denial of concessional reliefs which statute has conferred on the citizen.

In support of that contention, counsel invited our attention to the decision of a Constitution Bench of this Court in *State of U.P. v. Manbodhan Lal Srivastava*, [1958] SCR 533, wherein their Lordships were considering the implication of non-compliance with the conditions provided in Article 320(3) of the Constitution on an order imposing punishment to a Government servant without reference to the Public Service Commission.

- A While considering that question learned Judges made a reference to the Privy Council decision in *Montreal Street Railway Company v. Normandin*, AIR (1917) PC 142 and the Federal Court decision in *Biswanath Khemka v. Emperor*, AIR 1015 FC 67. The Constitution Bench held that the provisions of Article 320(3) are not mandatory and non-compliance of those provision does not afford any cause of action in a court of law. Privy Council in the above quoted decision has observed that the question whether provisions in a statute are directory of imperative depends upon the object of the statute and on general rule can be laid down. "When the provisions of the statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty and at the same time would not promote the main object of the legislature, it has been the practice to hold such provisions to be directory." This is not a case where a certain provision is mandatory or directory. Here the question is whether concessional relief of duty which is made dependent on the satisfaction of certain conditions can be granted without compliance of such conditions. No matter even if the conditions are only directory.

- In *Formica India Division v. Collector of Central Excise*, (1955) 77 ELT 511, non-compliance with Rule 56A of the Central Excise Rule, 1944 was held to be insufficient to deny the benefit of a notification to the assessee. But the said benefit was afforded on the special circumstances of a case as could be seen from the following words :

- F "The circumstances in which the appellants did not pay the duty on the intermediary product before putting the same to the captive consumption for producing that stage, the appellants contested the correctness of the classification and had, therefore, not paid the duty on the intermediary product. When it was found that they were liable to pay duty on the intermediary product and had not paid the same, but had paid the duty on the end product, they could not ordinarily have complied with the requirements of Rule 56A."

- H Nor can we find support from the ratio in *B.O.I. Finance Ltd. v. The Custodian & Others*, JT (1997) 4 15, that "infringements of the instructions issued by the Reserve Bank of India under the Banking Regulations Act

Prohibiting the banks from entering into buy-back arrangements do not invalidate such contracts entered into between the banks and its customers", as it involved a question of invalidation of the contract. Here neither the contract nor the import is invalid or illegal and the question is only whether the importer is entitled to the concessional duty. A

There is no legal foundation for both the appellants to secure the reliefs prescribed in Entry No. 84.66 of the Customs Tariff. Accordingly we dismiss these appeal. B

J.N.S.

Appeals dismissed.