

(2014) 02 BOM CK 0137**Bombay High Court****Case No:** Writ Petition No. 1642 of 2014

APM Terminals India Pvt. Ltd.

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision: Feb. 24, 2014**Citation:** (2014) 302 ELT 206 : (2014) 44 GST 319 : (2014) 25 GSTR 552**Hon'ble Judges:** Mohit S. Shah, C.J; M.S. Sanklecha, J**Bench:** Division Bench**Advocate:** Bharat Raichandani and Mr. Mihir Deshmukh, Mr. Omkar Sharma and Mr. Rajan Mishra instructed by Mr. Vaibhav P. Patankar, for the Appellant; S.P. Bharati, for the Respondent**Judgement**

@JUDGMENTTAG-ORDER

Mohit S. Shah, C.J.

Rule. Returnable forthwith. By consent taken up for final disposal. The petitioner-company is engaged in providing maritime transport services from India. The petitioner had filed Bill of Entry dated 20 February 2009 for the clearance of the "Reach Stacker" with accessories (impugned goods) under license No. 0310438457 issued under Served From India Scheme (SFIS) of the Foreign Trade Policy. The petitioner had claimed classification of the said goods as "material handling equipment" and the benefits of the customs duty exemption under Customs Notification No. 92/2004-Cus dated 10 September 2004 as amended, which extends the benefits of the utilization of duty credit earned under SFIS for payment of customs duty in case of goods covered by the above Notification.

2. The Asst. Commissioner of Customs had by order dated 30 March 2009 rejected/disallowed the petitioner's claim for the benefit of Customs Notification No. 94/2004 dated 10 September 2004 holding that the "Reach Stackers" are infact "vehicles" and that since the Customs notification excludes benefits to the vehicles, the petitioner cannot get the benefits of the notification and consequently benefits

of the SFIS.

3. Aggrieved by the above order, the petitioner filed an appeal before the Commissioner of Customs (Appeals), Mumbai-II at Nhava Sheva. Pending the disposal of the appeal, the petitioner paid an amount of Rs. 90,07,072/- under protest on 18 April 2009. By order dated 21 August 2009 the Commissioner of Customs (Appeals) accepted the petitioner's contention that the primary function of the Reach Stacker is to handle containers within a short distance for stacking and handling containers with the help of crane or model device. It is no doubt fixed on chassis fixed over wheels which are mechanically propelled but it is not a vehicle. It is not the function of this equipment to transport goods on the roads and therefore, not a vehicle. The appellate authority accepted the petitioner's contention that the fact in the present case are very similar to Ranadip Shipping & Transport Co. Pvt. Ltd. decided by this Court, which decision is reported in [Ranadip Shipping and Transport Co. Pvt. Ltd. Vs. Collr. of Customs](#). The appellate authority, accordingly, set aside the order in original and held that the Reach Stackers are eligible for benefit of exemption notification No. 92/2004-Cus dated 10 September 2004 and the duty credit under the SFIS scrip can be used to pay the duty.

4. In view of the above order dated 31 August 2009 of the appellate authority, the petitioner submitted an application dated 6 November 2009 for refund of customs duty paid on 18 April 2009 in respect of Reach Stackers. Copy of the application is produced at Exh. C to the writ petition.

5. The respondent-revenue, however, has carried the matter in appeal before the Customs Excise & Service Tax Appellate Tribunal (Tribunal) by filing Appeal No. C-1081/09. The revenue also moved an application for interim stay before the Tribunal. But by order dated 28 February 2001 (Exh. G) the Tribunal dismissed the said application after observing that the revenue has not made out a *prima facie* case for stay. Even though the Tribunal had rejected the stay application three years back, the Asst. Commissioner has not processed the petitioner's application for refund on the ground of pendency of the appeal. Even the Tribunal has not granted the prayer made by the petitioner for early hearing of the appeal in view of large pendency.

6. It is in the above circumstances that the petitioner has moved this Court for writ of mandamus to direct respondent No. 3-Asst. Commissioner of Customs (Nhava Sheva) to accept the petitioner's refund application and to sanction the refund of customs duty to the petitioner alongwith interest thereon.

7. Learned counsel for the respondents has opposed the writ petition and submitted that since the appeal filed by the revenue is pending before the Tribunal, no direction may be issued to the respondents. That ultimately if the appeal of the revenue is allowed, the revenue may find it difficult to recover the amount from the petitioner.

8. Having heard the learned counsel for parties, we are of the view that the petitioner is justified in making a grievance against the inaction on the part of the respondents-authorities in not processing the petitioner's refund application, in spite of the fact that the Commissioner of Customs (Appeals) has accepted the petitioner's claim for benefits of exemption notification No. 92/2004. In view of the above the petitioner is entitled to utilise the SFIS scrip to pay the duty of customs. When the Tribunal has dismissed the stay application of the revenue, the petitioner is entitled to get benefits of the appellate order, more particularly when the petitioner's case is already covered by the decision of this Court in Ranadip Shipping & Transport Co. Pvt. Ltd. (supra).

9. Following observations made by the Apex Court in Union of India and others Vs. Kamlakshi Finance Corporation Ltd., in similar circumstances are squarely applicable to the present case also:-

... The High Court has, in our view, rightly criticised this conduct of the Assistant Collectors and the harassment to the assessee caused by the failure of these officers to give effect to the orders of authorities higher to them in the appellate hierarchy. It cannot be too vehemently emphasised that it is of utmost importance that, in disposing of the quasi-judicial issues before them, revenue officers are bound by the decisions of the appellate authorities. The order of the Appellate Collector is binding on the Assistant Collectors working within his jurisdiction and the order of the Tribunal is binding upon the Assistant Collectors and the Appellate Collectors who function under the jurisdiction of the Tribunal. The principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The mere fact that the order of the appellate authority is not "acceptable" to the department-in itself an objectionable phrase-and is the subject-matter of an appeal can furnished no ground for not following it unless its operation has been suspended by a competent Court. If this healthy rule is not followed, the result will only be undue harassment to assessee and chaos in administration of tax laws.

In the result, the writ petition is allowed. Respondent No. 3 is directed to process the petitioner's application dated 6 November 2011 as expeditiously as possible and in any case within four weeks from today. Liberty to the petitioner to apply in case of any difficulty.