Carestream Health India Pvt. Ltd. Vs Union of India and Others

Writ Petition No. 11939 of 2013

Court: Bombay High Court

Date of Decision: Feb. 5, 2015

Acts Referred:
Constitution of India, 1950 - Article 226

Hon'ble Judges: N.W. Sambre, J.; S.C. Dharmadhikari, J.

Bench: Division Bench

Advocate: Prakash Shah and Jas Sanghvi and PDS Legal, for the Appellant; P.S. Jetly, Advocates for the Respondent

Judgement

1. The petitioner approached this Court with the following two prayers:

(a) this Hon''ble Court be pleased to issue a writ of Certiorari or a writ in the nature of Certiorari under Article 226 of the Constitution of India,

calling for the records pertaining to the Petitioner''s case and after going into the legality and validity thereof direct the Respondent No. 2 (i) not to

compel the Petitioner to make any deposit or pay any differential duty without due adjudication process, (ii) not to seize the goods imported and

already cleared for home consumption including those which are sold to the buyers, and (iii) the Petitioner be issued a proper Show Cause Notice

and be granted a fair hearing before the same is adjudicated.

(b) this Hon''ble Court be pleased to issue a writ of Mandamus or a writ in the nature of Mandamus or any other appropriate writ, order or

direction under Article 226 of the Constitution of India, ordering and directing the Respondents by themselves and their subordinates, servants and

agents (I) not to compel the Petitioner to make any deposit or pay any differential duty without due adjudication process, (ii) not to seize the goods

imported and already cleared for home consumption including those which are sold to the buyers, and (iii) the Petitioner be issued a proper Show

Cause Notice and be granted a fair hearing before the same is adjudicated.

2. The apprehension of the petitioner arises from the fact that it is carrying on business of import and resale of various electro diagnostic / electro

medical instruments. It is a subsidiary of a company based in the United States of America. Respondent Nos. 2, 3 and 4 are officers exercising

powers conferred upon them by the Customs Act, 1962. The petitioner has averred in the writ petition that there are oral instructions from the

Directorate of Revenue Intelligence and particularly a Deputy Director by which the petitioner may be called upon to deposit alleged differential

duty on the goods, more particularly described in para 3 of the writ petition.

3. It is the case of the petitioner that in May 2007, a Canada based company acquired the business of a health group of the Eastman Kodak

Company. Thereafter, the Corporation entitled Carestream Health Inc. an independent subsidiary of Onex Corporation, Toronto, Canada of

which the petitioner is an Indian subsidiary, dealt with these imports and of the goods which have been described in the writ petition. The

petitioner''s case is that when it was a subsidiary of Eastman Kodak, the classification of laser imagers and CR systems was accepted by the

Customs Department and this continued for about six years. It is only when the composition of the petitioner''s principal changed that the petitioner

apprehends that the imports would be treated differently. The petitioner apprehends that the classification of the petitioner''s goods and as made

from time to time by them would be questioned and not accepted. The petitioner has set out the details in the writ petition as to how prior

consignments were dealt with and rather cleared based on the classification made by the petitioner. Every single dispute pertaining to the same was

resolved and to the satisfaction of the parties viz. the petitioner. The department has accepted thus, any adjudication, as well. Hence the argument

is that none of the prior dealings and clearances particularly can be questioned and by taking recourse to the Customs Act, 1962. However, the

petitioner has been informed that the Directorate of Revenue Intelligence has initiated steps, inter alia, questioning the Customs Department''s

classification of the goods and in terms of the record submitted by the petitioner. It is, therefore, that the petitioner apprehends that a different

course may be adopted. The consignments now arriving would be subjected to coercive procedures and thereby the business of the petitioner

would be adversely affected.

4. We find that on such a petition, notice came to be issued and we have an affidavit of 22nd January, 2014, of one Ashwini Kumar working as

Deputy Director in the Directorate of Revenue Intelligence. In that affidavit, he has stated that information collected and further developed by this

Directorate indicated misclassification / misdeclaration of goods and resultant evasion of customs duty by the petitioner. In para 5 of this affidavit, the attention of this Court is invited to certain notifications issued under the Customs Act. The Directorate of Revenue Intelligence, therefore, is of

the opinion that neither the Act nor the Rules prohibit reopening of earlier assessments. In that regard, in para 9 it is asserted that the Customs

Department can reopen the assessment within the time limit stipulated under the Customs Act, 1962 and if petitioner''s contention to the contrary

is, therefore, denied, then, the powers of seizure under the Customs Act are also relied upon.

5. The petitioner''s classification is questioned in para 12 from page 95 and what is eventually stated is that for the purpose of classification and

availing exemption, the petitioners have wrongly described their goods. Thus, an allegation of misclassification has been made against the petitioner.

The decisions of the tribunal are also sought to be distinguished in this affidavit.

6. A general submission has been made that the petitioner has neither been coerced nor any demand has been raised to pay differential duty. In

these circumstances, the writ petition is nothing but an attempt to avoid investigation, scrutiny and even a reassessment, if permissible in law.

7. The petitioner has filed an affidavit-in-rejoinder denying all these contentions and pointing out that there is no change in the description or the

classification of the goods. The petitioner has been relying upon adjudication orders which have gained finality. It has also questioned the powers to

reassess or reopen the assessment already concluded.

8. What we find is that there is an additional affidavit and which is filed after the rejoinder. In that additional affidavit, the petitioner has pointed out

as to how prior clearances were without any obstruction or interference. The petitioner has referred to the oral directions once again in para 4 of

this additional affidavit and a demand of Rs.5 crore upfront towards differential duty. The petitioner states that the department is thus threatening

seizure of the goods if the petitioner fails to abide by the oral directions.

9. Such being the nature of reliefs claimed, we are not expected to express any opinion of the rival stands and the contentions. We have perused

the petition and the annexures thereto and all affidavits. We are of the opinion that the petitioner cannot have any apprehension and particularly that

they will not been dealt with in accordance with law. After taking instructions, Mr. Jetley submits that there are investigations which are going on

but which would be shortly concluded. We have no doubt in our mind that the authorities will take such steps as are permissible in law. They

would give opportunity to the petitioner and in accordance with law in the event they are desirous of reopening any assessments as has been stated

on affidavit before us. We have no doubt in our mind that there are enough powers in several authorities under the Customs Act, 1962 by which if

the petitioner is visited with adverse adjudication orders, they can be challenged on the point of jurisdiction as also on merits. All this can be done

within the Act itself. Further, we have no doubt in our mind that in the event any consignments and imported by the petitioner hereafter are being subjected to scrutiny or verification, even then any liability and towards duty has to be determined and adjudicated only in accordance with law. In

the event there are provisions enabling ad hoc or provisional assessment within the four corners of law, they would have to be resorted to. Thus,

there is no apprehension that the Directorate of Revenue Intelligence and at the behest of Directorate of Revenue Intelligence, the Customs

Department would act upon any oral directions which are questioned in this writ petition. In the circumstances, there is no need to keep this writ

petition pending. It is disposed of.

10. However, we would highly appreciate if the Directorate of Revenue Intelligence now finds time and concludes the investigations. The reason

given by Mr. Jeltey, on instructions, that the Directorate of Revenue Intelligence was not proceeding on account of pendency of the writ petition,

does not inspire confidence at all. This Court has not passed any preventive or prohibitory orders, much less favouring the petitioner. There was

nothing by which the authorities were prevented or precluded from carrying out their duty in accordance with law. In the circumstances, we do not

find any basis for halting the investigations if already initiated and on account of the pendency of this writ petition. We would now expect the

Directorate of Revenue Intelligence to conclude them so that there is no uncertainty, confusion and chaos.

11. The Writ Petition is disposed off. No costs.