

(1991) 04 CAL CK 0033

Calcutta High Court

Case No: Matter No. 5536 of 1988

Tata Consultancy Service

APPELLANT

Vs

Collector of Customs

RESPONDENT

Date of Decision: April 9, 1991

Acts Referred:

- Customs Act, 1962 - Section 130(3)

Citation: (1994) 54 ECR 291

Hon'ble Judges: Shyamal Kumar Sen, J; Ajit K. Sengupta, J

Bench: Division Bench

Judgement

Shyamal Kumar Sen, J.

The question of law referred to this Court in the instant reference arising u/s 130(3) of the Customs Act is as under:

Whether, on the facts and in the circumstances of the case, placing of an Order for supply of "Word Processor" with the foreign supplies (Tata Inc., New York) does amount to a firm contract?

2. The facts inter alia giving rise to the instant reference are that the Petitioner is rendering secretarial services to various Public Limited Companies Firms. It decided to import a "Word Processor" in the course of its said business. The import of Word Processor was allowed under an Open General Licence in the Import and Export Policy for the period April 1982 to March 1983 (in short 1982-83 policy) Appendix 2 of the 1982-83 policy set out a list of Capital goods which were allowed under open General Licence to actual users (industrial and non-industrial). In sub-Item (19) of Item 12 of the said Appendix 2 the "Word Processor" is specified. The Petitioner is an actual user (non-industrial).

3. Tata Inc., New York is a Company established inter alia for looking after procurement in USA of the goods required for all Tata concerns on a centralised

basis so that best possible equipments at the minimum expenditure could be purchased. Tata Units have been obtaining their goods from USA from the said Tata Inc. The Petitioner forwarded its requirement for the Word Processor to Tata Inc. which after negotiation informed the Petitioner to open a letter of credit for US Dollars 70,000 to enable it to send the equipment. In accordance with the provisions of the Foreign Exchange Regulation Act, 1973 (in short 1973 Act) the Petitioner made an application to Grindlays Bank Plc. Bombay, which is an authorised dealer under the 1973 Act for opening an irrevocable letter of credit in favour of Tata Inc., New York for US Dollars 70,000 for covering the import of the said Word Processor. The full description of the equipment to be imported together with copies of telex messages exchanged between the Petitioner and Tata Inc. were submitted along with the said application for opening the irrevocable letter of credit. On February, 24,1983 the said Bank opened an irrevocable letter of credit in favour of Tata Inc., New York for covering the import of the said "Word Processor".

4. In the Import and Export Policy for the period April, 1983 to March, 1984 (in short the 1983-84 Policy) the import of "Word Processor" was removed from "the Open General Licence. The "Word Processor" ordered by the Petitioner came after March 31,1983 during the period when the 1983-84 policy was in force.

5. The Customs Authorities initiated proceedings on the ground that the importation of the said "Word Processor" was not permissible under 1983-84 Policy and the contention of the Petitioner that the said import was permissible under the 1982-83 Policy by reason of condition (7) of Appendix 1 of 1982-83 Policy was rejected on the ground that there was no firm contract from import of the said equipment on or before February, 1983. Condition (7) of Appendix 1 of the 1982-83 Policy inter alia provides that where an eligible actual user importer entered into a firm contract for import upto February 28,1983 but the goods could not be shipped on or before March 31,1983 the shipment may be allowed upto March, 31,1984.

6. The Customs Authorities did not accept the order placed by the Petitioner on Tata Inc., New York to be a firm contract for import of the said equipment on the ground that the said Tata Inc. was a sister concern of the Petitioner and that it was not a manufacturer of the equipment and the Order placed with the said Tata Inc. did not mention the type, model and other specifications of the equipment and the equipment imported had been made after March 31, 1983. Besides the above points, objections were also sought to be raised by the Customs Authorities on the ground that the said "Word Processor" was a Computer and accordingly, it was not covered by the Open General Licence and its import could only be made after obtaining clearance from the Electronics Dep'tt. of the Govt. of India. It was further alleged that the Petitioner was not an eligible person to import the said equipment under the Open General Licence. The CEGAT in its Order did not sustain the aforesaid objections of the Customs Authorities and held that the equipment in question was not a computer and would not require any prior clearance from the

Electronics Deptt. It held that the Word Processor had been specifically mentioned in the list of the goods allowed under the Open General Licence and accordingly, the objections on that score could not be sustained. The CEGAT further found that the Petitioner satisfied the test of eligible person actual user (non-industrial) as defined in the 1982-83 Policy.

7. The CEGAT, however, upheld the Order of confiscation passed by the Customs Authorities u/s III(d) of the Act and the imposition of redemption fine solely on the ground that there was no firm contract for the import of the said equipment and as such condition (7) of Appendix 10 of 1982-83 Policy could not permit the said import which was effected after March 31,1983.

8. The only issue thus involved in the instant reference is whether there is a firm contract for the importation of the said Word Processor ? In case, there is such a Contract, then the importation is legal and valid and the Order of confiscation and imposition of redemption fine would be liable to be set aside.

9. It has been submitted that none of the reasons given by the Customs Authorities and upheld by the CEGAT for holding that there was no firm contract with Tata Inc., New York for import of the said equipment are legally correct and sustainable.

10. In our opinion the fact that Tata Inc. is a Company belonging to the Tata Group to which the Petitioner also belongs cannot be a ground for holding that there could not be a firm contract between the Petitioner and the said Tata Inc. and the Petitioner are two separate Public Limited Companies and are independent juristic bodies and are capable of entering into contracts amongst themselves. Tata Inc. is a Company incorporated under the laws of the USA and the Petitioner is a company incorporated under the Companies Act, 1956. There can be no legal and factual bar in two independent companies entering into a contract even if they belong to the same group.

11. There is no provision in the 1982-83 Policy that the import must be made under a contract entered into with the manufacturer of the equipment only. The contract for supply of the equipment could be entered into with any person who may either be himself a manufacturer or a dealer of the equipment.

12. The fact that the model of the equipment or the name of the manufacturer was not given or the equipment was made after March 1983 also cannot in any way prevent a firm contract being entered into between the Petitioner and Tata Inc. As already stated, the interest of the Petitioner was adequately being safeguarded by Tata Inc. a Company in the same group and the Petitioner was content with the placing of the order of the "Word Processor" of a model manufactured by a Company which the said Tata Inc. thought fit as the best equipment available for the Petitioner. There is nothing in the law of contract which debars a purchaser to leave the choice of the equipment to the seller's judgment, more so, keeping in view the position which the seller was having being a Company of the same group. It was not

necessary for Petitioner to lay down its own model or manufacturer's name while placing the order with Tata Inc. It rightly left the choice of the equipment to Tata Inc. so that the best available equipment at the best possible price could be had. It would be seen from the irrevocable letter of credit opened by the Bank that the particulars of the equipment, its accessories etc. were all specified. In any event this ground can be no ground whatsoever for holding that no firm contract was entered into with Tata Inc.

13. The fact that the firm contract was entered into is evident from the telex messages exchanged between the Petitioner and Tata Inc. and the fact that an irrevocable letter of credit was opened to cover the importation of the equipment in favour of Tata Inc. The Letter of Credit was irrevocable and it clearly establishes that the contractual obligation between the Petitioner and Tata Inc. was firm. The Petitioner received the equipment from Tata Inc. and the payment therefore was made against the said irrevocable letter of credit opened by it through the authorised dealer, namely, Grindlays Bank Plc. Bombay.

14. In the circumstances of the case in our opinion there was a firm contractual obligation between the Petitioner and Tata Inc. for import of the said equipment. Accordingly the question referred to this Court is answered in the affirmative and in favour of the Petitioner.

15. There will be no order as to costs in favour of the applicant.