
(2010) 05 CAL CK 0043

Calcutta High Court

Case No: Writ Petition No. 1069 of 2009

Govind Steel Co. Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision: May 10, 2010

Acts Referred:

- Customs Act, 1962 - Section 108, 110, 110A

Citation: (2010) 256 ELT 234

Hon'ble Judges: Indira Banerjee, J

Bench: Single Bench

Advocate: Arijit Chakraborty, for the Appellant; Tapas Kumar Hazra and Shampa Sarkar, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Indira Banerjee, J.

In this writ application, the petitioner has inter alia challenged an order bearing File No. S33-19/2009 Adin and DRI F. No. 128/KOL/APP/2008/804, 805 dated 16th August, 2009 of the Assistant Commissioner of Customs Adjudication Cell (Port) informing the petitioners that the goods of the petitioners had been allowed provisional release subject to payment of differential duty of Rs. 12,21,515/- and execution of a bank guarantee of 50 per cent of the differential duty and bond for the ascertained full value of the seized goods.

2. According to the petitioners, the petitioners have been importing old, used and rejected machines as scrap from the United States of America. The goods were assessed to duty. The petitioners made payment of goods. Thereafter, goods were allowed to be cleared.

3. However, on 20th September, 2008, officials of the Directorate of Revenue - Intelligence, conducted search at the factory premises of the petitioners and found seventeen old machines lying intact at the factory premises.

4. The said machines were, according to the petitioners, seized and notice u/s 110 of the Customs Act, 1962 was issued to the petitioners. Statements were also recorded u/s 108 of the Customs Act, 1962. It appears that a chartered engineer appointed by the Directorate of Revenue - Intelligence, gave a report stating that the goods were used machines that had been lying idle.

5. The petitioners applied to the respondent authorities for provisional release of the seized goods, pending adjudication, in terms of Section 110A of the Customs Act, which is set out herein below for convenience:

110-A. Provisional release of goods, documents and things seized pending adjudication. - Any goods, documents or things seized u/s 110, may, pending the order of the adjudicating officer, be released to the owner on taking a bond from him in the proper form with such security and conditions as the Commissioner of Customs may require.

6. The object of Section 110A inserted by amendment with effect from 13th July, 2006 is to ensure that the goods are not unnecessarily detained. The goods are required to be released on taking a bond in proper form, with such security and conditions as the Commissioner of Customs may require. The main object of the section is to secure the possible claim that the Customs might have.

7. It is difficult to accept the submission that Section 110A enables the petitioners to call for payment of the differential duty. That payment of the differential duty is not a condition for provisional release, is apparent from the language of Section 110A.

8. Mr. Hazra cited Assistant Collector of Central Excise, [Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others](#), where Supreme Court deprecated the practice of granting interim orders, which practically gave the principal relief sought in the petition, for the simple reason that a prima facie case might have been made out, without being concerned about the balance of convenience, the public interest and other relevant considerations. The Supreme Court observed that a levy or impost did not become bad, just because a writ petition was instituted in order to assail the validity of the levy. The Supreme Court also discouraged the practice of granting interim orders upon furnishing of bank guarantees.

9. The observations were made in the particular facts of the case where the Court was of the view that a strong prima facie case was in favour of the company for the benefit of exemption to the tune of Rs. 2,93,85,000/- and accordingly passed an interim order restraining realization of that amount. The company was directed to furnish a bank guarantee.

10. A judgment is a precedent for what is decided and is to be construed in the background of facts and circumstances in which the judgment is rendered. Observations in a judgment are not to be treated as statutory provisions and that too, without taking into account the context in which the judgment was rendered.

11. In the instant case the statute itself provides for provisional release. Provisional release has been allowed. The duty cannot be realized pending adjudication. It is always open to the importer concerned not to take provisional release if the terms of provisional release are not acceptable. No useful purpose could be served by detention of goods pending adjudication. Neither party would be benefited.

12. Furnishing of an unconditional bank guarantee covering the entire amount would fully secure any claim that the authorities might have. The Commissioner of Customs would be entitled to fix the terms and conditions of the bank guarantee so that the interest of the respondents is fully secured. The petitioner may be directed to furnish an unconditional bank guarantee payable on demand.

13. The petitioner might be directed to renew the bank guarantee sufficiently in advance upon notice to the respondents, failing which the bank guarantee might be encashed. It may be made clear that the bank guarantee would have to be unconditional bank guarantee.

14. From the order impugned, it is patently clear that the Assistant Commissioner of Customs has proceeded to allow provisional release subject to payment of differential duty, which is not a condition for release u/s 110A.

15. The impugned order is set aside. The Assistant Commissioner of Customs is directed to take a fresh decision on the application of the petitioners for release of goods in the light of the observations made above within a fortnight from the date of communication of this order. The Commissioner of Customs may impose such conditions for furnishing of bank guarantee as the Commissioner of Customs deems fit and proper, to secure the claim of the Revenue and may further direct renewal thereof within a stipulated time prior to its date of expiry, upon notice to the Commissioner of Customs, failing which the bank guarantee shall be invoked without further reference to the petitioners.

16. The writ application is disposed of.

17. Urgent certified copy of this order, if applied for, be supplied to the parties within three days subject to compliance with all requisite formalities.