(1990) 06 CAL CK 0028

Calcutta High Court

Case No: Matter No. 2494 of 1988

Best Liquifiable Gases Ltd.		APPELLANT
	Vs	
Collector of Customs (Appeals)		RESPONDENT

Date of Decision: June 6, 1990

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 41 Rule 27

Citation: (1991) 38 ECR 436 : (1991) 51 ELT 321

Hon'ble Judges: Susanta Chatterji, J

Bench: Single Bench

Judgement

Susanta Chatterji, J.
The present writ petition has been filed challenging the orders dated 29-7-1987 and 24-11-1987 confirming the demand of the bond and rejecting the appeal being Annexures "D" and "E" respectively and for other consequential reliefs on the ground that the respondent No. 2 Assistant Collector of Customs by rejecting and/or refusing registration of Project Import Contract inspite of payment of proper import duty under Heading No. 84.66 of the Customs Tariff Act of 1975 has failed to act in accordance with the provisions of Project Imports (Registration of Contract) Regulations, 1965 read with the Customs Tariff Act of 1975. It is stated that the respondent No. 2 committed an error by fixing the amount arbitrarily at a highly inflated figure of Rs. 81,710.94 even after realisation of proper Import Duty of Rs. 40,855.47P. for the imported con-

2. The petitioner alleges that against the order of adjudication passed by the respondent No. 2 the petitioner preferred an appeal before the respondent No. 1 Collector of Customs (Appeals) and the respondent No. 1 who heard the petitioner''s ap-peal on 16th of November, 1987 dismissed the same holding, inter alia, that two of the documents had not been produced before the original authority in time although the same had been

produced at the appellate stage and that submission at the appellate stage cannot come to their rescue.

3. Being aggrieved the petitioner has come to this Writ Court seeking reliefs as indicated above.

4. The writ petition is opposed by the respondents by filing an affidavit-in-op" position. It is disclosed that the petitioner imported a consignment of 104 Dissolved Acetylene Empty Gas Cylinders from Japan against the relevant Import Licence and the petitioner was allowed to clear the said consignment on payment of concessional rate of duty under Project Import Regulations, 1965 after registration of the contract and execution of the provisional assessment bond. In terms of the said bond the petitioner was obliged to submit all the relevant documents for finalization of the contract within the stipulated time as mentioned in the Bond itself failing which they had to pay the bond amount on demand.

6. It is further disclosed that after clearance of the goods and on the expiry of the time limit as mentioned in the Bond the petitioner was called to submit the reconciliation statement along with necessary documents as per. proforma for finalisation of the contract case and consequent cancellation of the bond executed by them. The main purpose of asking for the aforesaid documents was to find out as to whether the petitioner really fulfilled the requirements of the Project Import Regulations, 1965.

7. It is asserted that the request of the petitioner for extension of time for submission of such documents was duly granted and the petitioner was granted very opportunity for production of documents and submission of information and after giving a due notice the terms of the Bond were enforced upon the petitioner loading confirmation of demand for the bond amount of Rs. 80,901.92P. but since the petitioner has failed to comply with the same and relevent documents were not filed and the informations were not supplied, the impugned order was made in accordance with law. .

8. Having heard the learned Counsel for the petitioner and also the Custom Authorities at length and after going through the impugned order passed by the respondent No. 2 and the order in Appeal by the respondent No. 1 it appears that although the relevent documents were filed before the Appellate Authority the same were not taken into consideration as the said documents were not filed within the time as provided in the Bond and the Appellate Authority thought it fit to exercise the jurisdiction to consider the case on merit by overlooking the aforesaid documents.

9. With great anxieties this Court has considered the case of the respective parties and in particular, the impugned order in appeal. Upon perusal of the materials On record this Court is of the view that since the relevant documents were filed and there was no lack of bona fide, the Appellate Authority ought to have given another opportunity to the petitioner by extending the time to receive the documents in question and ought to have

directed the respondent No. 2 to consider again the case of the petitioner after admitting the documents in the proper perspective. The principle of admitting additional evidence as envisaged under Order 41 Rule 27 of the CPC cannot be lost sight of, as this principle is a sound principle for the ends of justice and for the fulfilment of the principles of natural justice indeed. Since the documents have in fact, been produced, the question of consideration is as to the time factor. For non-filing of a document within time the merit of the case may not be prejudiced unless there is lack-of bona fide in this regard. Any delay can be condoned if sufficient explanation is given and the Authority may exercise the discretion in accordance with law. For the fitness of things and for the ends of justice the present writ petition is disposed of by setting aside the impugned order and directing the Respondent No. 2 to admit the documents and to consider the case afresh on merit by giving an opportunity of hearing to both sides.

10. It is made clear that this Court has not considered the case on merit nor this Judgment will influence either side so far as the merit of the case is concerned.

11. It is made clear that the respondent No. 2 will be entitled to ask for the production of the documents already filed before the Appellate Authority within a time as he would think fit and proper and thereafter to proceed in accordance with law.

12. There will be no order as to costs.

13. All parties concerned to act on a signed copy of the operative portion of this judgment on the usual undertaking