IN THE HIGH COURT OF MADRAS

AT MADURAI

WP(MD) No.18976 of 2018
WMP(MD) No.16810 of 2018

M/s THE BELL MATCH COMPANY
REPRESENTED BY ITS PARTNER
R VASANTH RAJA SINGH

Vs

1) COMMISSIONER OF CUSTOMS (PREVENTIVE)
HEADQUARTERS, NO 1, WILLIAMS ROAD
CANTONMENT, TRICHY-620001

2) JOINT COMMISSIONER OF CUSTOMS (PREVENTIVE)
OFFICE OF THE ADDITIONAL COMMISSIONER OF CUSTOMS
MANDAPAM ROAD, RAMANATHAPURAM-623503

G R Swaminathan, J

Dated: March 04, 2019

Appellant Rep by: Mr A K Jayaraj
Respondent Rep by: Mr R Aravindan

Cus - The petitioner, a 100% EOU is engaged in manufacture of Match Sticks - M/s. Eutrabell India was issued with LOP for transferring the capital goods in question from their unit to the petitioner - It is not in dispute that at the time when LOP was granted, the subject transaction was governed by notfn 52/03 - One of the conditions incorporated in said notfn was that in case of capital goods, it must have been installed or otherwise used within the unit, within a period of one year from the date of import or procurement thereof or within such extended period not exceeding five years - Admittedly, the petitioner did not satisfy the aforesaid requirements - When proceedings were initiated in this regard by issuing a SCN, the petitioner took the stand that notfn 34 of 2015-Customshad done away with the requirement of installing capital goods within a period of one year - Instead the earlier notification was so amended as to provide for such goods being installed or otherwise used within the unit within the period of validity of LOP - It is not in dispute that the purchase of goods by petitioner from Eutrabell India partakes the character of an import - The petitioner was therefore otherwise liable to pay customs duty on the goods procured from the Eutrabell India - The only reason the petitioner was exempted from such liability was on account of the applicability of notfn 52/2003-Customs - The LOP was granted in favour of Eutrabell India, governing the transaction between the Eutrabell India and the petitioner - The petitioner ought to have satisfied the conditions laid down in said notfn - The said notification requires that in case of capital goods they should have been installed or otherwise used within the unit within a period of one year from

the date of import or procurement - Of course, the petitioner could have obtained extension of time limit not exceeding 5 years - In this case, the petitioner did not obtain such an extension - Therefore, on account of the operation of the Clause 3(d)(1)(i) of notfn 52/2003, the petitioner came under a liability - It is true that this notification was later amended on 25.05.2015 vide notfn 35/2015 - It is also true that the notification reads as if it is a substitutive amendment - But then, when liability has already accrued, the same cannot be washed away or effaced by a subsequent notfn, because, there is no clause in notfn 35/15 stating that it would cover even antecedent cases which failed to satisfy the conditions laid down in notfn 52/2003 - It is well settled that even a retrospective amendment will not take away the vested rights of the parties - The same logic and principle will apply in the case of accrued liability also - The writ petitioner had already come under a liability on account of non-adherence to conditions stipulated in the notfn 52/2003 - The impugned order is sustained: HC

Writ petition dismissed

Case laws cited:

Commissioner of Income Tax (Central)-1, New Delhi Vs. Vatika Township Private Limited - 2014-TIOL-78-SC-IT-CB ...Para 6

East West Exporters Vs Assistant Collector of Customs 1993 68 ELT 319...Para 7

JUDGEMENT

Per: G R Swaminathan:

Heard the learned counsel for the writ petitioner and the learned standing counsel for the respondents.

2. The writ petitioner is a 100% export oriented unit. It is engaged in manufacture of Match Sticks. M/s. Eutrabell India, Sivakasi was issued with letter of permission dated 06.11.2012, for transferring the capital goods in question from their unit to the writ petitioner.

3. It is not in dispute that at the time when the letter of permission was granted, the subject transaction was governed by notification No.52/03 dated 31.03.2003. One of the conditions incorporated in the said notification was that in the case of capital goods, it must have been installed or otherwise used within the unit, within a period of one year from the date of import or procurement thereof or within such extended period not exceeding five years. Admittedly, the petitioner did not satisfy the aforesaid requirements.

4. When proceedings were initiated in this regard by issuing a show cause notice dated 23.01.2018, the writ petitioner took the stand that the notification No.34 of 2015-Customs dated 25.05.2015 had done away with

the requirement of installing the capital goods within a period of one year. Instead the earlier notification was so amended as to provide for such goods being installed or otherwise used within the unit within the period of validity of the letter of Permission (LOP).

5. The learned counsel for the writ petitioner states that this is a substitutive amendment and therefore retrospective. The stand of the petitioner was not accepted and the impugned order dated 25.06.2018 came to be passed against the writ petitioner. The same is assailed in this writ petition.

6. The learned counsel for the petitioner apart from reiterating the contentions set out in the affidavit in support of this petition, also filed his written submission. He places great stress on the decision of the Hon'ble Supreme Court reported in *2015 (1) SCC 1 in the case of Commissioner of Income Tax (Central)-1, New Delhi Vs. Vatika Township Private Limited* = *2014-TIOL-78-SC-IT-CB*. He therefore wanted this Court to treat the notification No.34/2015 dated 25.05.2015 as retrospective in character.

7. The respondents have filed a detailed counter affidavit and the learned standing counsel reiterated all the contentions set out there in. He placed particular reliance on the decision unreported in *1993 68 ELT 319 in the case of East West Exporters Vs Assistant Collector of Customs*.

8. I carefully considered the rival contentions.

9. It is not in dispute that the purchase of goods by the writ petitioner from Eutrabell India partakes the character of an import. This is because, both of them are 100% export oriented units. The petitioner was therefore otherwise liable to pay customs duty on the goods procured from the Eutrabell India. The only reason the petitioner was exempted from such liability was on account of the applicability of notification No.52/2003-Customs dated 31.03.2003. As already pointed out, the letter of permission was granted in favour of the Eutrabell India, governing the transaction between the Eutrabell India and the writ petitioner on 21.12.2012. The petitioner ought to have satisfied the conditions laid down in the notification No.52 of 2003 dated 31.03.2003. As already pointed out, the said notification requires that in the case of capital goods they should have been installed or otherwise used within the unit within a period of one year from the date of import or procurement. Ofcourse, the petitioner could have obtained extension of the time limit not exceeding 5 years.

10. In this case, the petitioner did not obtain such an extension. Therefore, on account of the operation of the Clause 3(d)(1)(i) of notification No.52/2003 dated 31.03.2003, the petitioner came under a liability. It is true that this notification was later amended on 25.05.2015 vide notification No.35/2015. It is also true that the notification reads as if it is a substitutive amendment. But then, when liability has already accrued, the same cannot be washed away or effaced by a subsequent notification, because, there is no clause in the notification No.35/15 dated 25.05.2015

stating that it would cover even antecedent cases which failed to satisfy the conditions laid down in the notification No.52/2003 dated 31.03.2003.

11. It is well settled that even a retrospective amendment will not take away the vested rights of the parties. The same logic and principle will apply in the case of accrued liability also. The writ petitioner had already come under a liability on account of non-adherence to conditions stipulated in the notification No.52/2003 dated 31.03.3013.

12. In this view of the matter, the impugned order is sustained and this writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.