Tata Tea Ltd.

Vs

Commissioner of Customs, Chennai

Civil Appeals Nos. 3942-43 of 1998

(S. P. Bharucha, A. P. Misra, R. C. Lahoti JJ)

25.11.1999

JUDGMENT

R. C. LAHOTI JJ :

1. The appellant is tea company. In the year 1982 it imported two decanter machines from Germany. The customs duty, additional duty and the other duties leviable thereon were duly paid. The machines were installed at the tea factory of the appellant situated at Munnar (Kerala). In the year 1992 some parts of the machine requiring such repairs as could not be carried out in India, were sent to Germany after obtaining previous permission of the Government of India. The parts were repaired and thereafter reimported in July 1993. The appellant claimed exemption from payment of customs duty under Notification No. 13/81 which was denied by the Assistant Collector of Customs. An appeal preferred by the appellant before the Commissioner of Customs (Appeals) was allowed. The Revenue preferred a further appeal before CEGAT which has been allowed and the order of the Assistant Collector of Customs restored. Cross-appeal preferred by the appellant has been dismissed. Aggrieved by the order of the Tribunal, the appellant has filed these appeals under Section 130-E of the Customs Act, 1962. The only question arising for decision is whether the appellant is entitled to the benefit of Notification No. 138/81 read with Export and Import Policy, 1992-97 (hereinafter "the Policy" for short).

2. Export and Import Policy, 1992-97 announced certain benefits and privileges to 100% export-oriented units (EOUs). Vide order dated 9-6-1992 the Government of India declared that appellant a unit entitled to facilities and privileges admissible under the 100% export-oriented scheme by permitting the conversion of the appellant from existing domestic tariff area (DTA) into 100% EOU at Munnar in the State of Kerala for the manufacture of instant tea powder and aqueous tea aroma (by-product) up to the specified capacity. This decision of the Government of India entitled the appellant to import additional capital goods worth Rs. 300 lakhs CIF for the project as per the list enclosed which included decanters, two in number. It was also specified that the import of capital goods, raw materials and components for production under this scheme shall be exempt from customs duty. Availing the benefit of EOU sanction letter the appelant had imported capital goods (other than those in issue) worth Rs. 225 lakhs. A balance of Rs. 75 lakhs' entitlement was still available to the appellant. According to the appellant the cost of repairs incurred in Germany was Rs. 38,06,017 which was declared by it to be the value of the goods for the purpose of reimportation in terms of Notification No. 13/81.

3. Notification No. 13/81 has been issued in exercise of powers conferred by sub-section(1) of Section 25 of the Customs Act, 1962. The central Government has exempted capital goods, inter alia, when imported into India for the purpose of manufacture of articles for export out of India by

100% EOUs provided that the importer has been granted necessary licence for the import of the goods for the said purpose. This is one of the several conditions that is required to be satisfied.

4. The Import Export Police, 1992-97, vide para 24, provides that second-hand capital goods and any other second-hand goods shall not be imported unless permitted by this policy or in accordance with a licence issued in this behalf. Para 25 catalogues (a) to (l) sectors of the industry for which second-hand capital goods may be imported without a licence. Admittedly, the appellant does not fall in any of such categories. Para 26 provides that any other second-hand capi8tal goods (i.e. other than those specified in para 25) may be imported in accordance with a licence issued in that behalf. Para 31 permits imported capital goods or parts thereof being sent abroad for repairs and reimported but subject to certain specified conditions. Para 159 permits conversion of an existing domestic tariff area (DTA) unit into an EOU. It is specifically provided – "no concession in duties and tax shall, however, be available under the scheme for plant machinery and equipment already installed". Para 172 allows the units to reimport, after repairs abroad, machinery equipment exported by them for this specific purpose and payment of foreign exchange for this purpose.

5. There is yet another Notification No. 204/76 issued under Section 25(1) of the Customs Act whereby articles when reimported into India after having been exported for repairs subject to compliance with certain specified conditions have been declared liable to payment duty only on the value of such reimported goods which would be made up of the fair cost of repairs carried out plus insurance and freight charges both ways.

6. The Tribunal has referred to and made analysis of all the abovesaid provisions and then concluded that the Import Export Policy, 1992-97 read with Notification No. 13/81 gives exemption tot he goods imported for the first time in India and does not cover the goods already imported and sent abroad for the purpose of repairs and then reimported to India.

7. Having heard the learned counsel for the parties, we are of the opinion that the order of the Tribunal cannot be found fault with. Under Section 20 of the Customs Act, 1962 read with definition of "import" as given in clause (23) of Section 2, imported goods would include reimported goods as well and therefore the goods sent out of India and reimported would also be liable to payment of duty in the same manner in which they would have been liable if imported for the first time in India. In the matter of goods sent out for repairs only there is Exemption Notification. No. 204/76. The benefit thereof has been taken by the appellant. A perusal of Export Policy, 1992-97 and Exemption Notification No. 13/81 clearly shows that the benefit thereof was not available to the appellant in the case at hand. The machinery parts exported for repairs and reimported thereafter did not require any licence for the import of the goods, which licence is one of the conditions precedent to attract applicability of Notification No. 13/81. Same is the inference which flows from the provisions contained in paras 24, 25, 26 and 31 of the Policy. Para 172 of the Policy makes it legal to reimport after repairs abroad the machinery and equipment exported specifically for the purpose of repairs and also allows release of foreign exchange payment for the purpose. Both these things may not have been permissible but for para 172 of the Policy. This is the only effect of para 172. Reliance on para 172 so as to link the Policy with Notification No. 13/81 is misconceived. Para 159, while permitting conversion of an existing DTA into EOU, specifically excludes any concession in duties and tax (under the Policy) being made available to plant and machinery already installed. The parts exported and reimported by the appellant were of the machinery "already installed" on the date of promulgation of the Policy. They were certainly not covered thereunder.

8. For the foregoing reasons, the appeals are held liable to be dismissed and are dismissed accordingly though without any order as to the cost.