

Bombay High Court

Rajneesh Aggarwal vs Union Of India (Uoi) on 31 March, 2003

Equivalent citations: 2003 (157) ELT 26 Bom

Author: V Daga

Bench: V Daga, J Devadhar

JUDGMENT V.C. Daga, J.

1. The petitioner/ a sole proprietor of M/s. Mahendra Impex filed this petition challenging the alleged unlawful/illegal withholding of clearance of the Ball Bearings imported by the petitioner on the basis of apprehended undervaluation. The petitioner has also challenged the Notification No. 70/89, dated 1st March, 1989 incorporated at Exh. 'G' to the petition and prayed for declaration of nullity thereof. The petitioner by way of interim relief had claimed that, pending the disposal of the petition, the respondents be ordered and directed to grant clearance of the goods covered by the bills of entry at Exh. 'E-1' to 'E-8' without in anyway subjecting to enhancement or loading but upon the petitioner's executing proper security. This Court while entertaining this petition granted rule and was pleased to grant interim relief in favour of the petitioner in terms of the minutes of order dated 25th May, 1990. The respondents were directed to allow the clearance of the goods forthwith on the following terms and conditions.

- (i) The petitioners to pay duty at the rate of then prevailing viz. 150 plus 45 pl
- (ii) The petitioners to execute personal bond qua balance of amount of duty as clai
- (iii) In addition the petitioners to furnish a Bank Guarantee to the extent of 50% o

It appears that the aforesaid interim order operated in favour of the petitioner and sub

2. This petition came up for final hearing almost after 13 years. The learned Counsel for the petitioner reported that the sole petitioner Mr. Rajneesh Aggarwal is no more. He died leaving behind the sole legal heir Smt. Aarti Kiran Dhingra. No steps were taken either by the legal heir of the petitioner or by the respondents to substitute the name of the petitioner with that of his sole legal heir. It is really surprising that the revenue did not apply for substitution eventhough heavy stakes of revenue are involved in the petition. The negligence on the part of the Revenue is further writ large from the fact that the bank guarantee furnished by the petitioner late Shri Rajneesh Aggarwal is also missing with all other relevant documents. As a matter of fact, in number of cases such statements were made on behalf of Revenue before this Court. In one of the matters, this Court had occasion to direct the Chief Commissioner of Customs to make enquiry and to fix responsibility in that behalf after due investigation. But to our surprise, the report revealed nothing but an attempt to save the skin of the officers involved and a stooked reason was given as mentioned in the present affidavit that the file might have been misplaced due to frequent shifting of records in the last decade. Looking to the attitude of the head of the Customs Department, we do not think any useful

purpose would be served by keeping this petition pending and directing any further enquiry in the matter of missing record and bank guarantee.

3. The learned Additional Solicitor General requested this Court that notice be issued to the sole legal heir of the petitioner and this Court should help the Revenue to recover their dues. It is difficult for this Court to extend any helping hand to protect the interest of the Revenue when the Revenue itself is not serious in prosecuting and/or defending their cases before the Court. Moreover, the Revenue has neither the bank guarantee furnished to it nor the files pertaining to the case of the petitioner are traceable so as to enable them to pass assessment thereon.

4. We cannot do better than to express our anguish and dismiss this petition as abated for want of legal heir of the sole petitioner on record. Accordingly, the petition stands dismissed as abated. The interim relief stands vacated. Liberty is reserved in favour of the Revenue to proceed with the proceedings in accordance with law on its own merits.

5. The Prothonotary and Senior Master of this Court is directed to send the copy of this order to the Chairman, Central Board of Excise & Customs, New Delhi for information and, if possible, for taking corrective steps to protect the interest of Revenue in accordance with law.