

(2000) 06 BOM CK 0044
In the Bombay High Court
Case No : Writ Petition No. 1129 of 2000

Aditya Mills Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 06-06-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 113, 130D

Citation : (2002) 142 ELT 46

Hon'ble Judges : S.H. Kapadia, J; R.M.S. Khandeparkar, J

Bench : Division Bench

Advocate : S.A. Diwan and S.N. Kantawalla, for the Appellant; P.S. Jetly and B.M. Chatterjee, for the Respondent

Final Decision : Dismissed

Judgement

1. By this writ petition, the petitioners seek to challenge the validity of judgment and order dated 15th October 1999 passed by CEGAT in Appeal No. CD(Bom.)-218,286/86 2000 (90) ECR 221 .

2. The facts giving rise to this petition, briefly, are as follows :

The petitioners are, inter alia, Exporters of various types of yarn. On 14th August 1985, a show cause notice was issued by the Customs authorities alleging misdeclaration by the petitioners with regard to 754 cartons of polyester yarn carted by the petitioners under seven shipping bills for exports. At that stage, samples were drawn. After drawing samples, several statements of various functionaries of the petitioners came to be recorded. On the basis of the said statement, a show cause notice alleging misdeclaration with regard to the goods came to be issued. By an order in adjudication passed on 20th December 1985, the goods came to be confiscated u/s 113(i) of the Customs Act with an option to redeem the goods on payment of redemption fine of Rs. 3 lakhs. A penalty of Rs. 10 lakhs was also imposed on the petitioners. This order has been confirmed by the Tribunal vide the impugned order. All the authorities below found that the

yarn was manufactured from waste fibre and not from virgin fibre. Hence, this petition.

3. Mr. Diwan, the learned Counsel appearing for the petitioners, vehemently urged that in the present matter there is no evidence whatsoever to indicate that the yarn was manufactured out of waste fibre. Mr. Diwan contended that in the present matter the declaration submitted by the petitioners clearly indicated that the yarn was manufactured out of first quality (virgin) fibre. In particular, he relied upon the certificate dated 31st October 1984 issued by SASMIRA in which it has been stated that it was not possible to find out whether the fibre used in the blended yarn was virgin or not because the characteristic of the yarn is likely to be affected while manufacturing the yarn particularly when it undergoes the chemical treatment. It was further urged on behalf of the petitioners that since the yarn was manufactured from waste which has been duly processed, the same was made from first quality fibre. It was also urged that there was no definite meaning assigned to the expression virgin fibre. It was, therefore, contended that in the present matter looking to the facts and circumstances of the case, the penalty imposed was not warranted.

4. We do not find any merit in the above contentions- Firstly, it may be mentioned that there are concurrent findings of fact recorded by the authorities below with which we do not wish to interfere under Article 226 of the Constitution. We are not sitting in appeal over the findings of fact recorded by the said authorities. Secondly, the Adjudicating Authorities as well as the Appellate Authorities have taken into account the statements of various persons which were recorded at the time of inspection of the goods. The said statements clearly indicate that even according to the assessee, the said yarn was manufactured from the waste fibre. In particular, our attention has been invited to the statement of Shri S.S. Gehlawat, Spinning Manager. It is in the nature of admission. The said statement clearly recites that some waste fibre was used for manufacturing the yarns. Hence, we do not find merit in the contention that the yarn was not made from waste fibre. In any event, it cannot be said that the view of the authorities below was perverse. In the circumstances, since we are not sitting in appeal over the said findings, it is not possible to interfere with the findings of fact recorded by the authorities below.

5. Mr. Diwan, however, contended that in the present matter at the stage in question the provisions of Section 113(i) of the Customs Act could not have been invoked. He contended that u/s 113(i) the goods either were required to be dutiable or prohibited. He contended that in the present matter, the goods were admittedly not dutiable. He contended that on the facts and circumstances of the case, this Court is required to examine the scope of the expression "prohibited" in Section 113(i) of the Customs Act. He contended that in the present matter, it cannot be said that the export of the goods was completed. He contended that in the present matter, the assessee has not got the benefit of any duty drawback. He contended that at this stage the goods could not have been confiscated. This

argument has been rightly rejected by the Tribunal. In the present matter, there was an attempt to export the goods on the basis of misdeclaration. In the present matter, as rightly observed by the Adjudicating Authority, at the stage of examination also the goods do come under the control of the Customs and once they come under the control, the exporters have no control over the goods and therefore, in the examination of the case if it is found that there is a case of misdeclaration, then certainly Section 113(i) of the Customs Act would stand attracted. The reliance placed by the learned Counsel on the judgment of the Tribunal in the case of 1995 (80) ELT 624 and also the judgment of the Tribunal in the case of 1996 (63) ECR 413 have no application whatsoever to the facts of the case. In the case of Badri Prasad (supra) on facts it was found that M/s. Badri Prasad & Sons Pvt. Ltd. filed a shipping bill at the Indira Gandhi International Airport for export of hosiery fabrics with the gross weight of 6800 kgs. Subsequent to the shipping bill having been passed, when the goods were received by the carrier, it amended the weight in the airway bill from 6800 kgs. to 2700 kgs. The Collector came to know about the change in the weight. He carried out investigation. On the basis of that investigation, show cause notices were issued to the exporter as also to its agent/broker. After considering their replies, the Collector invoked Section 113(i) in that matter, the claim made by the assessee that the goods in question did not fall in any of the categories stipulated in Section 113(i) was not challenged by the Department or its representative. In the circumstances, the judgment in the case of Badri Prasad (supra) has no application to the facts of the present case. Similarly, in the case of Shilpi Exports (supra) also the Tribunal found that the charge of over-valuation levied by the respondent-Collector was not proved. Under the above circumstances, both the above judgments relied upon by the petitioners' Counsel have no relevance to the facts of the present case. In the present case misdeclaration was an attempt to export the goods which has been proved as stated hereinabove. In the above circumstances, the provisions of Section 113(i) stood attracted.

6. We do not see any reason to interfere with the order of CEGAT. Writ Petition is rejected accordingly.