(1984) 07 CAL CK 0010

In the Calcutta High Court

Case No : Civil Order No. 10,792 (W) of 1982

Arora International APPELLANT

Vs

Collector of Customs and Others RESPONDENT

Date of Decision : 05-07-1984

Acts Referred:

Customs Act, 1962 — Section 111
Import (Control) Order, 1955 — Section 3(1)

Citation : (1985) 5 ECC 30 : (1989) 24 ECR 92 : (1988) 34 ELT 425

Hon'ble Judges : Ajit Kumar Sengupta, J

Bench : Single Bench

Advocate : Somnath Chatterjeeand Goutam Mitra, for the Appellant;Uma Sanyal, for the Respondent

Final Decision : Allowed

Judgement

Ajit Kumar Sengupta, J.—The petitioner No. 2, A.K. Arora carries on business in import and export of goods under the name and style of M/s. Arora International.

2. On or about 21st February, 1983, a REP licence for Rs. 2,27,700/-was issued by the Joint Chief Controller of Imports and Exports, New Delhi in favour of M/s. Asum Traders Private Limited of New Delhi, a Manufacturer Exporter on prior export basis. The said licence is governed by the Import and Export Policy of 1982-83. Against the item "description of goods" in the said licence the following endorsement appears : "Items mentioned under A.B.C. in column 4 of Appendix 17 of A.M. 83 Policy against Group 0.1 (0.one) as amended upto date with restrictions, if any, mentioned therein". One of the conditions of the said licence as specified in the said licence is to the following effect :

"This licence shall be subject to the conditions in force relating to the goods covered by the licence as described in the relevant Import Trade Control Policy Book or any amendment thereof made upto and including the date of issue of the licence, unless otherwise specified."

3. The said licence is a transferable licence and was transferred by the said Asum Traders Private Limited in favour of the petitioner under paragraph 140 of the Import Policy of 1982-83 which reads as follows :-

"Para 140. The REP licence will be issued in the name of the registered Exporter only and will not be subject to Actual User condition. Except for cases covered by paras 136(2) and 186(1), a licence holder may transfer the licence in full or in part in favour of any other person. The licence holder or such transferee may import the goods permitted therein but the facility of paragraphs 136(2), 137 and 146 shall not be available to any transferee, unless the transferee is himself a registered exporter and can satisfy the Custom authorities at the time of clearance of the goods, of his bonafides."

4. On or about January 1984 the petitioners imported 1,56,000 yards of Continuous Chain (ZIP TAPE in Rolls), a component of Zip Fasteners from Taiwan. The said consignment was shipped from Hong Kong and was carried by S.S. Ramoneverett. The said consignment was despatched by M/s. Vikudha Overseas Corporation, Hong Kong. The said consignment arrived at Calcutta in February, 1984 and the petitioners submitted the Bill of Entry for Home Consumption on 16th February 1984 with all relevant documents for clearance of the said consignment. The value of the said consignment is Rs.1,33,384.12. The Customs authorities withheld the release of the said consignment without assigning any reasons therefore.

5. On or about 13th June 1984 this writ application has been moved upon notice to the respondents. The grievance of the writ petitioner is that although the consignment in question is covered by the said licence the respondents are not releasing the said consignment. Nor they have given any reason for withholding the release thereof. The action of the respondents, it is alleged, is arbitrary and illegal. It has been agreed that the matter could be disposed of on the basis of the records and no affidavit need be filed. The respondent, however, do not admit the allegations made in the petition. I, therefore, heard the elaborate submissions of the learned Advocates appearing for the parties. The records have been produced before me.

6. It is not in dispute that the said licence authorities the import of the goods in question. The only ground taken for withholding the release of the goods as would appear from the records produced before me is that the import of Zipper Chain in Rolls can only be allowed upto 5% of the total value of the licence which comes to Rs. 11,885/- and since the importer has allegedly not submitted any other valid licence to cover the balance goods worth Rs. 1,27,678/- becomes unauthorised and is liable to confiscation in terms of Section 111(d) of the Customs Act, 1962 read with clause 3(1) of Import (Control) Order, 1955.

7. As indicated earlier, the said licence is governed by the Import Policy of 1982-83 and under the said licence items mentioned under (a), (b) & (c) in column 4 of Appendix 17 of Import and Export Policy of 1982-83 against 0.1

(0.one) as amended upto date with restriction if any mentioned therein can be imported. Appendix 17 of 1982-83 Policy contains the Import Policy for registered exporter. The relevant entry is as follows :

Statement of Import Replenishment -- SI. Export Product Import Materials permitted Remarks No. replenishment for import percentage -- (1) (2) (3) (4) (5) -- 0.1 Cotton ready-made 10% Trimmings and garments, hosiery and embellishments, the knitwear following : . . . . (xiv) Zip Fasteners. --

8. It is evident from the endorsement of the said licence that the restrictions contained in column 4 of Appendix 17 will only apply. So far as the Zip Fasteners are concerned, there is no restriction in column 4 at all. Wherever there is a restriction regarding quantum of import, it has been specifically mentioned in column 4 against the item itself, e.g. Items IV, VI and XV. Restriction in those cases has been imposed indicating the percentage in column 4. In the case of Zip Fasteners there is no such restriction. The contention of the Customs authorities that the restrictions mentioned in column 4 against Sl. No. 0 ''Ready-made Garments, Hosiery Knitwear'' shall govern all the items mentioned under 5.. No. 0.1. This contention has no substance. As I said that the said licence speaks of restriction, if any, under column 4 and not under column 5. Where the licensing authorities intended that the restrictions under column 5 shall be applicable, there has been specific mention in the licence itself. One of such licences has been annexed to the petition. It appears from the endorsement in the said licence that general note in column 5 against the product group "0" would apply to the said licence. In other words, even if no restriction in column 4 is mentioned against the item itself, general restrictions contained in column 5 shall apply in view of the aforesaid conditions mentioned in the licence. It is also evident from the various items under Product Group "0" that restriction, if any, under column 5 has been specifically mentioned against respective items.

9. I am, therefore, unable to accept the contention of the Customs authorities that the licence does not permit the import of the goods worth Rs. 1,33,384.12. The value of the licence is Rs. 2,27,700/- and the value of the goods imported is Rs. 1,33,384.12. No other contention is raised on behalf of the Revenue authorities.

10. In the result this application succeeds. The respondents are directed to assess the Customs duties within three days from the date of communication of this order and complete all formalities as regards the release of the goods covered by the Licence No. P/K/2977908/C/XX/ 86/D/82, dated 21-2-1983 and Bill of Lading No. 1736, dated 27th January 1984. Upon payment of the Customs duties as may be assessed, the respondents shall release the goods forthwith thereafter. Inasmuch as the goods had been detained since February 1984 by the

Customs authorities, the Customs authorities are directed to issue Wharf Rent Exemption certificate on the ground of special exemption in respect of the said goods from the date of noting of the Bill of Entry till the date of release. Such certificate shall be issued forthwith upon payment by the petitioners the assessed duty.

11. Let a plain copy of this order countersigned by the Assistant Registrar (Court) be handed over the Advocates appearing for the parties concerned.

