(1984) 07 CAL CK 0013

In the Calcutta High Court

Case No : Civil Order No. 10432 (w) of 1984

Arora International APPELLANT

Vs

Collector of Customs RESPONDENT

Date of Decision : 05-07-1984

Acts Referred:

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

Citation : (1988) 38 ELT 577

Hon'ble Judges : Ajit Kumar Sengupta, J

Bench : Single Bench

Advocate : Ajay Kumar Mitra and Gautam 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, Inter alia, in import and export of goods In the name and style of "Arora International". On or about 10th March, 1983, a REP licence for Rs. 1,47,800/- was issued in favour of one Creative Arts, a merchant exporter, by the Joint Chief Controller of Imports and Exports, Calcutta. The said licence is governed by the Import and Export Policy of 1982-83. The said licence is transferable. A part of the said licence to the extent of Rs. 1,33,020/-was transferred by the said Creative Arts hi favour of the petitioner on 23rd March, 1983.

2. On or about 30th April, 1982, a REP licence for Rs. 1,44,600/- was issued in favour of one International Exports Inc. of Calcutta, a merchant exporter, by the Joint Chief Controller of Imports and Exports. The said licence is also governed by the import and Export Policy of 1982-83. The said licence is also transferable and was transferred by International Exporter Inc. hi favour of the petitioner on 22nd May, 1983.

3. The transfer of the said two licences by the said merchant exporters was made in terms of paragraphs 140 and 141 of the Import policy of 1983-84 which read

as follows :-

"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). 138,185(2) and 186(1), a licence holder may transfer the licence in full or 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 Customs Authorities at the time of clearance of the goods of his bona fides.

141. The transfer of the licence will not require any endorsement or permission from the licensing authority, i.e. it will be governed by the Ordinary law. Accordingly, clearance of the goods covered by a REP licence issued under this Policy, will be allowed by the Customs Authorities on production by the transferee of only the document of transfer of the licence concerned in his name."

4. The said licences were issued for import of product falling under Group D. 2.2. The first of the aforesaid two licences has been endorsed to the following effect:

"As per list attached and condition on reverse."

(i) 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 there of made up to and including the date of issue of the licence, unless other wise specified.

(ii) This licence shall be subject to the conditions applicable to the class of Importer concerned as contained in the relevant Import Trade Control Policy Book and the Hand Book of Import Export Procedures, or any amendment thereof made up to and including the date of issue of the licence, unless otherwise specified.

This licence is issued subject to the condition as laid down in paras 140 and 209 Import P.O. Book 1982-83. XX."

5. The list of items as per list attached with the said licence contains amongst other the following:

(a) Micro-crystalline Wax.

(b) Locks, suitcase fittings and metal fittings.

(c) Zip, snap fasteners (5%)

6. The second licence contained the following endorsement:

"As per list attached and conditions on reverse "The conditions, inter alia, are as follows:

(i) This licence will be subject to the conditions in force relating to the goods covered by the licence as described in the Import Trade Control Policy Book for the period during which the licence has been issued, or any amendments thereof made up to and including the date of issue of the licence, unless otherwise specified.

... ... (vi) This licence is issued subject to the condition as laid down in para 140 and 209 of Import Policy Book 82-83."

The list of items as per list attached with the said licence contains amongst other the following:

(a) Micro-crystalline wax

(b) Locks, suitcase, fittings and metal fittings.

(c) Zip, snap fasteners. -

7. In or about September 1983, the petitioner imported 8,45,000 pieces of metal fittings (puller) from Taiwan. The said consignment of goods arrived in February, 1984 and the petitioner, thereafter, submitted Bill of Entry licence and other necessary documents. The value of the said consignment is only Rs. 36,563.87.

8. In or about 1983, the petitioner imported 20,00,000 pieces of metal fittings (puller) from Taiwan. The said consignment arrived in April, 1984 and the petitioner submitted the Bill of Entry licence and relevant documents on 16th April, 1984. The value of the said consignment is Rs. 90,846.56.

9. The petitioner claimed clearance of the goods worth Rs. 36,201.85 against the licence dated 30th April, 1982 and the goods worth Rs. 90,846.56 against the licence dated 10th March, 1983. Since the goods had not been released to the petitioner after submission of the Bills of Entry, the petitioner moved this Court on 13th June 1984 upon serving notice to the respondents. It is agreed that the matter may be disposed of on the basis of records and no affidavit need be filed. The respondents without admitting the allegations made in the petition have produced the records.

10. Elaborate arguments have been made by the learned Advocates appearing for the parties. The main contention of the respondents is that since the pullers are component parts of zip fastener and are other than metal fittings mentioned at Serial No. (b) of the list attached to the aforesaid two licences and since the goods under the aforesaid two bills of entry had been shipped during the currency of Import and Export. Export Policy of 1983-84, the clearance of such goods is not allowed under the Open General Licence (OGL) during the policy period 1983-84, as the item in question has been included in Appendix 4, Serial No. 88 of the 1983-84 Policy. Since the pullers are not specifically covered by the lists attached to the said two licences, their import without a valid licence becomes unauthorised and is liable to confiscation u/s 111(d) of the Customs Act, 1962, read with Section 3(1) of the Imports (Control) Order, 1955.

11. The contentions of the Revenue authorities have to be considered in the light

of the provisions contained in the relevant Import Policy or Policies. The aforesaid licences are governed by 1982-83 Policy. The items which appear in the said list are enumerated in Serial No. 0. 2.2 of Appendix 17 of 1982-83 Policy. Appendix 17 contained the Policy regarding the import by the registered importers. The relevant entries of Appendix 17 are to the following effect:

SI.No. Export Product Import Material import Permitted for replenish- remarks ment per- centage

--- (1) (2) (3) (4) (5)

--- D. 2.2. Light categories of travel and 15% (a) Micro-crystal- Import of Zip/ other leather goods like at- line Wax. Snap Fasteners tache cases, brief cases, (b) Locks, Suitcase shall not exceed ladies hand bags, wallets, fittings and Metal 5% of the value leather hand gloves other fittings. of the licence than industrial leather gloves (c) Zip, Snap Fas- subject to a covered by SI. No. D. 2.4. teners. maximum of Rs. (d)... 50,000.

--- 12. The said licences are REP licences and are freely transferable without any actual user condition. It is not in dispute that Metal fittings (pullers) which are sought to be imported under the aforesaid licences are used for leather bags. It is evident that in column 4 Appendix 17 against Serial No. D. 2.2 there are two different items, one mentioned under Item (b), that is locks, fittings and Metal fittings, the other mentioned in Item (c), that is, zip/snaps fasteners. Therefore, Metal fittings and zip/snap fasteners have been treated as two separated items. Pullers are part of Metal fittings.

13. Appendix 4 of 1982-83 Import Policy contains list of non-permissible items (banned). At Serial No. 73 under the heading "Engineering Items" an item appears which is described as ''fasteners, snap and zip." There is no mention of Metal fittings at Serial No. 73.

One of the general conditions mentioned in Appendix 17 of 1982-83 policy inter alia, provide as follows:

"5. No import of all item appearing in Appendix 4 shall be allowed against REP licences, except if such item is specially described for import either in Column 4 or Column 5 or against an Advance/Imprest Licence issued under this Policy".

14. It is, therefore, evident that Appendix 4, only restricts such Items which are not specially described for import either under Column 4 or Column 5 of Appendix 17, Metal fittings are specially described for Import under Column 4 of Appendix 17 of 1982- 83 policy. Therefore, restriction imposed In Appendix 4 will not be applicable in case of import of Metal Fittings (pullers). The restriction imposed under Appendix 4 cannot also be applied in respect of zips/snaps fasteners appearing In Column 4 against Serial No. D. 2.2 being an item specially

described. Otherwise no licence could have been issued under 1982-83 policy allowing import of Metal Fittings and zip/snap fasteners under the said REP licences.

15. I am, therefore, unable to accept the contention of the Revenue Authorities that 1982-83 policy imposed a ban on the import of Metal Fittings (pullers) as they are parts of components of zip/snap fasteners. In the immaterial whether Metal Fittings (pullers) are components of zip fasteners or not. So long as the items are specially described for import under Column 4 or under Column 5 of Appendix 17, the ban imposed In Appendix 4 cannot apply to the import of such specified items.

16. The next contention is that even assuming that the licences authorise the import of Metal Fittings (pullers) under 1982-83 policy, but when the goods have been actually imported a ban has been imposed even for Import of components of zip/snap fasteners and Metal Fittings being components of zip/snap fasteners and Metal Fittings being components of zip/snap fasteners cannot be Imported at all. This contention has no substance. Firstly, a licence is governed by the relevant policy under which It was Is- sued subject to all amendments which had been made at the date of issuance of the said licence. This is one of the conditions of the licence itself. If any amendment comes or new policy is evolved in respect of Items covered by the licence subsequently, such amendment cannot govern respectively the licence already Issued. There is always a time lag between the date when the licence is Issued and the date when the actual Import takes place. Even if an importer takes all steps for import of the goods, the goods may arrive during the currency of the policy period and by the time the goods arrive at the port, they become "banned items". In such a case if the goods are not allowed to be cleared on the ground that at the date when the goods have arrived, the goods are no longer permissible as an item for import, the importer is bound to suffer loss and injury. The Central Board of Excise and Customs in a custom Appeal in the case of Arvind Exports Private Limited passed an order being Order No. T. 21A of 1981 dated 23rd December, 1981 where the Board has held as follows:

"The Board also observes that the earlier orders of the the Board cited by the appellants contain clear findings which are binding on the subordinate authorities that the licence Issued during a policy period is governed by that policy as amended up to the date of issue of the licence and amendments made after the date of issue do not have any application to the licences".

7. "While It might be expected of the importers to generally comply with the import restrictions in force at the time they place orders for importation, in view of the decisions of the Board and the Government cited by the appellants, the Board is unable to share the Additional Collector''s reasoning that for non-compliance by the importers in such case, the importation would be liable to confiscation. As the law is clearly established, the remedy would lie not In taking recourse to confiscation, but to refer such importations to the Import Trade

Control authorities for such disciplinary action as they may like to take against individual importers under their own authorities. The Board accordingly sets aside the Additional Collector''s orders and allows the appeal."

17. In that view of the matter the Customs Authorities are precluded from contending that the licences would have to be interpreted in the light of the Import Policy prevalent at the time when the goods have been actually imported. It is the policy In force at the date of issue of licence shall govern the import.

18. The next contention is that assuming the licence are governed by the Import Policy of 1982-83 which may not have banned the import of components of zip/ snap fasteners, but subsequently the import of such goods has been banned. This contention has been made with reference to Appendix 4 of 1983-84 policy which specifies a list of non permissible items (banned) and the item which appears at Serial No. 88 is described "Fasteners-snap-zip (including in Coil form) and components thereof." The contention is that metal fittings (pullers) are nothing but the components of zip fasteners and as such in view of the ban imposed under Appendix 4 cash (such) components cannot be imported. This contention, in my judgment, has no substance and cannot be accepted.

19. Import Policy of 1983-84 has not made any substantial difference in respect of import of goods mentioned in Appendix 17. Appendix 17 of 1983-84 policy, against Serial No. D. 2.2 under Column 4 at Item (b), locks, suitcase fittings and Metal Fittings and at item (c) zip/snap fasteners appear. Items mentioned in items (b) and (c) also appear under Column 4 of 1982-83 policy. Under Column 5 It is mentioned that Import of zip/snap fasteners (including zips in coils and its components) shall not exceed 5% of the value of the licence subject to maximum of Rs.50 thousand.

20. In Appendix 17 of 1983-84 policy general conditions are mentioned and one of such conditions is that that no import of item appearing in Appendix shall be allowed against REP licences except if such item is specially described for Import either under Column 4 or under Column 5. Metal Fittings and zip fasteners are two separate items specially mentioned in Column 4 against Serial No. D. 2.2. Not only that In Column 5, the import of zip-snap fasteners including zips in coils and its components are allowed to be imported, but subject to certain maximum limit. Thus neither metal fittings, nor zip/snap fasteners, nor their components being specially mentioned in Column 4 and Column 5 of Appendix 17 cannot be treated as banned items under Appendix 4.

21. Thus Metal Fittings (pullers) whether they are components or parts of zip/ snap fasteners are covered by the aforesaid licences. Neither expressly nor by implication Metal Fittings (pullers) can be treated as banned items under the Import Policy of 1982-83 and import policy of 1983-84. Thus, the contentions raised by the Revenue Authorities have no substance.

22. As a matter of fact, Metal Fittings (pullers) have been released in a few cases during 1982-83 as Open General Licence item in terms of Appendix 1982-83 as

Open General Licence items in terms of Appendix 10. Serial 1 of 1982-83, policy, instances of such clearances have been stated in the Writ petition which are not specifically denied. No other contention has been raised on behalf of the Revenue.

23. In the result the application succeeds. The respondents are directed to complete the assessment of the consignments Imported by the petitioner under licence Nos. P/K/0486170/C/XX/83/C/82/D.2.2 dated 30.4.1982 and P/K/2966905/C/XX/86/C/82/D.2.2 dated 10.3.1983 and release the goods forthwith upon payment of duty to be assessed. All the formalities must be completed within 7 days from date of communication of this order. Since the goods had been detained by the Customs Authorities, they are directed to Issue Wharf Rent Exemption Certificate on the ground of Special Examination of the said goods from the date of noting of the bills till the date of release.

24. Let a plain copy of this order signed by the Assistant Registrar (Court) be handed over to the learned Advocates for the parties.

