

(2000) 02 DEL CK 0086
In the Delhi High Court
Case No : CWP No. 6709 of 1999

Ashish Enterprises

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 15-02-2000

Acts Referred:

Imports and Exports (Control) Act, 1947 — Section 4I(1), 4I(i)(a)

Citation : (2000) 118 ELT 331

Hon'ble Judges : D.K. Jain, J;Arun Kumar, J

Bench : Division Bench

Advocate : Randhir Singh, for the Appellant; Sachin Dutta, for the Respondent

Final Decision : Allowed

Judgement

1. The petitioner has challenged the order, dated 24th December, 1998 passed by the Additional Director General (Foreign Trade) and order, dated 24th August, 1999 passed by the Appellate Committee in an appeal preferred by the petitioner against the original order. By the original order a penalty of Rs. 50 lakhs was imposed on the petitioner besides disqualification for imports up to the year 2002. This action was taken u/s 4-I(i)(c) of the Imports and Exports (Control) Act, 1947 although the show cause notice proposed action u/s 4-I(i)(a) instead of 4-I (i)(c). The Appellate Committee reduced the penalty to Rs. 2.50 lakhs and also quashed the disqualification imposed with respect to imports.

2. The main contention of learned counsel for the petitioner is that the action was without jurisdiction inasmuch as Section 4-I(1)(a) or (c) are not attracted in the facts and circumstances of the present case. Our attention was drawn to the relevant provisions. Sub-clause (a) relates to import of goods and material under a license or letter of authority whereas Sub-clause (c) deals with the cases where the importer makes a declaration for the purpose of obtaining a license etc. The petitioner imported the goods under OGL (Open General Licence), i.e., without any licence. Sub-clauses (a) & (c) referred to above deal with cases where license has been obtained or declaration is made for purpose of obtaining a

licence. In the present case neither any license had been obtained nor any declaration had been made for obtaining licence. The goods were imported without any licence. As a matter of fact, the action against the petitioner is purported to be under Sub-clause (c) which envisages a declaration. In the present case no declaration was made by the petitioner and, Therefore, Sub-clause (c) will not be attracted. Therefore, in our view Section 4 -I (1) is not attracted at all. It is stated in the writ petition that action had already been taken against the petitioner under the provisions of the Customs.

3. Learned counsel for the respondent has argued that the petitioner cannot be better off as compared to a person who obtained a licence. According to the learned counsel the petitioner did not obtain a license and at the same time indulged in importing goods contrary to what is permissible under the rules. If the petitioner violated any conditions regarding import of goods, it has been dealt with under provisions of the Customs Act. It is not necessary that petitioner must be dealt with under the Imports & Exports (Control) Act as well. The argument raised by learned counsel for the respondent in our view has no force. The case does not fall within the ambit of the Imports & Exports (Control) Act, 1947. The writ petition is allowed. Both the impugned orders are hereby quashed. There will, however, be no order as to costs.