
(1988) 05 DEL CK 0028

In the Delhi High Court

Case No : Civil Writ Petition No. 1192/79

B.C. Mody Export Pvt. Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 23-05-1988

Acts Referred:

Citation : AIR 1989 Delhi 1 : (1988) 35 DLT 18 : (1988) 17 ECC 250 : (1988) 36 ELT 475

Hon'ble Judges : P.K. Bahri, J

Bench : Single Bench

Judgement

P.K. Bahri, J.—This is a writ petition brought under Article 226 of the Constitution of India seeking to quash order dated April 12, 1979, made by the respondent u/s III(D) of the Customs Act, 1962.

2. The facts, in brief, are that petitioner No. 1 is eligible export house and holds an eligibility certificate for products of the following group :

- (a) Engineering goods :
- (b) Chemicals and allied products; and
- (c) Fish and fish products.

Under the scheme of promotion of exports and for granting eligibility certificates of a particular product group to an eligible export house, the petitioners claimed that they are entitled to claim transfer of license issued in favor of registered exporters in their own name and substitute the item of import as per column IV in in Section II of Volume II of Import Trade Control Policy of a particular product group of which the export house has eligibility certificate as per para 12(1) Section I Part C of Red Book Vol. II pages 22-23 of Import Trade Control Policy for the year 1973-74.

3. The petitioners in the year 1974 had imported 8 consignment of synthetic resin polyester resin chips (semi dull) from Japan. These imports were effected

under bills of entry dated March 11, 1974 to October 31, 1974, of which details are given in para 3 of the petition. The licenses of respect of these import items had been issued in favor of Actual Users (Registered Exporters) and they have been transferred in the name of the petitioners under sub-clause 5(3)(i) of the Imports (Control) Order, 1955. The Collector of Customs, Bombay, served show cause notices in respect of these eight consignments u/s 124 of the Customs Act, 1962, objecting to the import of these products on the basis of the aforesaid licenses on the ground that those licenses did not cover the imported products. The goods were confiscated u/s 111(d) of the Customs Act, 1962 read with Section 3 of the Imports & Exports (Control) Act, 1947, subject to redemption on payment of fine. The Collector of Customs, Bombay, also imposed on the petitioners penalties u/s 112 of the Customs Act, the detail of which are furnished in para 5 of the petition. The appeals were filed by the petitioners before the Central Board of Excise and Customs but those appeals came to be rejected. The petitioners then filed revision petitions to the Government of India u/s 131 of the Customs Act, 1962. The revision petitions were only partly allowed inasmuch as redemption fine was reduced to about 50% and penalties imposed were set aside.

4. According to the petitioners, public notice dated September, 18 1974 (Annexure "IX") had been issued prohibiting the import of the products of the nature subject-matter of this writ as they were not to be covered by the expression "synthetic resin" and also referred to public notice of the same date in that respect of and reading of both the said notices made it clear that the Customs authorities were directed not to allow in future such imports but in respect of the imports effected before the date or the orders placed before that date of Customs authorities, were required to allow the said Imports. According to the Customs authorities, the aforesaid license which have been got transferred in the name of the petitioners from the registered importers the product synthetic resin could be imported which could be used for production of filter and filter elements. On the import licenses it is mentioned the these imports have been allowed against Export Product Group No. A-136.24 which pertains to the product filter and filter elements. These licenses for importing the synthetic resin had been granted to the said registered importers in order to replenish their raw material which was to be used for their products filter and filter elements and those licenses could not be used for importing any raw-material which had no use for the said export product of filter and filter elements. It is not disputed that the goods imported by the petitioners on the basis of the aforesaid licenses were on test found to be polyester synthetic resin with similar amount of dulling agent in the form of chips of textile grade. Hence, according to the Customs authorities, the goods imported were not covered by the aforesaid licenses and thus were liable to be confiscated. It is pertinent to mention that no reasons were given by the Collector of Customs in his order as to why these products could not be allowed to the imported on the basis of the aforesaid public notice. The order of the Board rejecting the appeals has not been placed on the record.

The revisional authority while agreeing with the findings of the lower authorities that the products imported by the petitioners were not covered by the licenses issued, however, did take into consideration the fact that there has been a practice being followed by the Customs authorities in allowing the products of the type in question under the import licenses granted for import of synthetic resin without correlating it with the export product mentioned in the licenses and the revisional authority went on to grant same relief in the redemption fine and the penalties. The revisional authority did not examine the implications of the said public notices of 1974 by which the directions had been given to the Customs authorities to clear such product as before if orders had been placed for import of such products on the basis of such like import licenses before the issuance of this public notice. A perusal of the order of the Collector and also of the revisional authority shows that much stress has been laid before the said authorities that the words "synthetic resin" would cover the goods in question and once the export house like the petitioners had got the license transferred in their names then export houses are not bound to import the goods which can be used only for the product mentioned in the said licenses but they could be used for any product of the group for which the export house is registered. Counsel for the petitioners in this writ petition has not pressed this particular argument. He has only confined his arguments to the effect of the said two public notices and has urged that as the goods imported by the petitioners were of the period prior to issuance of the said public notices, so they should have been cleared by the Customs authorities without imposing any redemption fine or penalties. He has relied upon a judgment of the Bombay High Court wherein the aforesaid circulars have been explained and it has been laid down that the goods which have been imported on the basis of such like licenses prior to issuance of the aforesaid public notices are to be cleared by the Customs authorities without imposing any redemption fine or penalties. A copy of the said judgment of the Bombay High Court is Annexure XII. In the said case Gujarat State Export Corporation Ltd. and another Vs. Union of India and another, , the eligible export house had imported 64 boxes (pellets) containing synthetic resin (polyester chips) on the basis of licenses transferred to the said export house under the Import Policy for the year 1973-74. The goods were forfeited on the ground that the licenses did not cover the said goods. In that case also it was pleaded by the Collector of Customs that imported goods are of textile grade and are not meant to be used for Export Product Group A-136.24 which covers filter and filter elements. So, the Collector had allowed the goods to be redeemed on the payment of redemption fine in lieu of confiscation. The questions which have been raised in this writ were also realised before the Bombay High Court with regard to the said policy of the Government which permitted the said products to be imported earlier, the Bombay High Court found that the Customs authorities had earlier consistently followed the practice to release such goods against similar licenses to the said export house. It was held that the goods could not be confiscated. I will now refer to the public notices which, in my opinion, clinch the issue in this case. The judgment of the Bombay High Court has not been challenged by filing any appeal

in the Supreme Court. So, it will show that the Union of India has accepted the verdict given in that particular judgment. The public notice dated September 18, 1974 (Annexure IX) reads as follows :

"Under the Import Policy in force "Synthetic resins is one of the licensable items. This is required as raw materials in Paints, Adhesives, Plastic Goods and Surface Coating Industries. It is hereby clarified that import licenses issued for this items are not valid for the Import of Polyamide resins, Polyester resins and Polyester chips of textile grade which are required in the manufacture on nylon fiber/filament and Polyester fiber/filament."

5. The other circular issued by the Government of India of the same date (copy Annexure X) has been sent to all Collector of Customs of which subject is the same as in the public notice and it was mentioned that some parties, having import licenses for synthetic resins, have been importing polyamide resins, polyester resins or polyester chips against such licenses and strictly speaking it may not have been possible for the Customs to treat such imports as unauthorised and, Therefore, a public notice has been issued of the same date clarifying that the import licenses issued for synthetic resins are not valid for the import of polyamide resins, polyester resins and polyester chips of textile grade and so, it was directed that the provisions of this public notice will not affect imports already made, or shipments already effected or irrevocable Letters of Credit already opened and accepted by the Indian Banks before the date of issue of the public notice. So, it is clear from this public notice and the circular that the imports made by the petitioners could not have been confiscated because it was clarified that it is only in future that such products would not be allowed to be imported for the licenses issued for importing synthetic resins. The respondents could not, in my opinion, take the plea that they were not bound by the said circular and the public notice because it is not shown that at any time this circular was withdrawn or any fresh circular had been issued clarifying the matter.

6. I may mention that no counter has been filed in opposing the write. However, counsel for the respondents had made reference to I.N. Saksena Vs. State of Madhya Pradesh, , in support of his contention that the said circular issued by the Government of India to Collector of Customs has no binding legal force. Facts, in brief, of this case are that a memorandum had been issued to all Collectors and different departments regarding the decision of the Government for raising the age of compulsory retirement from 55 years to 58 years but the said memorandum was not gazetted but it was mentioned in the memorandum itself that necessary amendments to Fundamental Rule 56 shall be made in due course. Subsequently Fundamental Rule 56 was amended without incorporating the clause and empowering the Government to retire the Government servants from service above the age of 55 years by giving them three months notice. It was held that the memorandum amounted only to an executive instruction of the Government and not a rule within the meaning of Article 309 of the Constitution. It was held that the Government servant could be retired only after following the

amended Fundamental Rules 56 and not on the basis of mere memorandum. The case is totally distinguishable because after issuance of the memorandum, the Fundamental Rule 56 was amended and obviously the rights flowing from amended Fundamental Rule 56 were to be given effect to and not anything said in the memorandum. Such is not the case here. The public notice and the circular in question were never modified or changed at any time, so they have to be considered binding on the parties. It could not be left to the discretion of the different Collectors of Customs either to follow the said circular or not to follow the said circular. The said discretion if had been given it would have been completely arbitrary. In case they had exercised discretion in favor of one party and not in favor of the similarly placed other, such act of the Collector of Customs could have been struck down as violative of Article 14 of the Constitution.

7. Counsel for the petitioner has referred to *Bharat Barrel and Drum Mfg. Co. (P) Ltd. Vs. The Collector of Customs, Bombay and Another*, . One of the points which arose for decision in this case was as to whether a particular public notice could operate retrospectively or is to be deemed to come into operation prospectively ? On seeing the wordings of the particular public notice, the Supreme Court held that it did not have any retrospective operation. In the present case, the wordings of the public notice and the circular as detailed out above make it clear that the same were to apply prospectively and not retrospectively. So, this writ petition has to succeed on short ground that the goods in question, which have been imported prior to issuance of the aforesaid public notice, could not be confiscated as such goods have been allowed to be imported on the basis of such like licenses earlier and even the Government of India had issued directions to all the Collectors of Customs for clearing such imported goods if the orders have been placed for importing those goods before the issuance of the aforesaid public notice. The petitioner has pleaded in the petition that such goods had been transported even prior to issuance of the said public notice and no counter has been filed challenging this particular fact. So, the impugned orders are liable to be set aside.

8. The petitioners have also by amended writ petition prayed that the respondents be also directed to issue a detention certificate so that the petitioners may get waiver of demurrage charges from the Port Trust Authority. The detention certificate is to be issued if the goods are detained by the Customs House for bonafide operation of import control formalities without any default on the part of the importers. There are other conditions on the basis of which the detention certificate could be issued. Counsel for the respondents has referred to *Gaurisons and another Vs. International Airport Authority of India and another*, . In this judgment the Court has held that the International Airport Authority of India is to waive the demurrage charges on the basis of its own rules and regulations. However, it was also held in this judgment that if the detention certificate is issued by the Customs authorities on the ground that the goods have been detained due to import license formalities then demurrage charges

could be waived by the International Airport Authority. Nothing said in this judgments is of any help to the respondents. Here, the goods have been wrongly confiscated and not released to the petitioners on account of import license formalities. Hence the petitioners were not to be blamed for the same and the respondents are bound to issue detention certificate to the petitioners. It was not incumbent on the petitioners to have imp leaded the Bombay Port Authorities in this writ petition. After necessary detention certificate is issued in favor of the petitioners by the respondents, it is for the petitioners to seek waiving of demurrage charges by the concerned authority.

9. Hence, in view of the above discussion, I allow the write petition, make the rule absolute and quash the impugned orders and direct the respondents to issue detention certificate to the petitioners, as prayed by the petitioners. The respondents shall pay costs to the petitioners which I quantify at Rs. 1,000/-.