
(1984) 09 DEL CK 0034
In the Delhi High Court
Case No : L.P.A.M.O. 107 of 1973

Bloomfeld Trading Company

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 17-09-1984

Acts Referred:

Citation : (1986) 9 ECC 31 : (1985) 22 ELT 398

Hon'ble Judges : Sunanda Bhandare, J;D.K. Kapur, J

Bench : Division Bench

Judgement

Smt. Sunanda Bhandare, J.—This letters Patent Appeal is directed against the judgment of the learned Single Judge whereby the writ petition filed by the appellant under Articles 226 and 227 of the Constitution of India was dismissed.

2. The appellant M/s. Bloomfeld Trading Company under a license issued on 10th October, 1968, by the Deputy Chief Controller of Imports and Exports, Kanpur were allowed to import parchment paper-wood free board-highly glazed and finished and glassing paper. An amendment was incorporated in the aforesaid import license at the request of the appellant on 6th January, 1969, and the following items were added : (a) Facial and Toilet tissue; (b) Napkin and Serviette tissue; (c) Base Paper for Napkins; (d) Matrix Boards. The appellant placed an indent with M/s. F. Gardner Corbeet Limited for supply of Napkin and Serviette tissue paper. The said firm confirmed the order placed upon them. Two different consignments were shipped; one of SS Minikoi and other on SS Mombasa of the face value of 551 each - The goods landed at Bombay sometimes in the end of June, 1969. On inspection it was found by the Principal Appraiser of the New Customs House, Bombay that the goods imported were not in conformity with the Import license issued to the appellant. Whereas the goods imported were declared as Napkin and Serviette Tissue paper, on examination the same were found to be machine finished tissue paper of packing and wrapping variety. A show cause notice was, Therefore, issued why penal action not be taken u/s 112 of the Customs Act and goods confiscated u/s 111 of the

Act. Representation was filed by the appellant and after affording an opportunity of hearing, the Deputy Collector of Customs came to the conclusion that the Explanation offered by the appellant was not satisfactory since the goods imported were machine finished tissue papers which are commonly used for packing a wrapping purposes. Accordingly, he ordered that the goods in question be confiscated. He however gave an option to the petitioner to pay a fine of Rs. 10,000/- and clear the goods in lieu of confiscation. An appeal and revision filed by the appellant failed and, Therefore, the writ petition was filed in this court under Articles 226 and 227 of the Constitution of India.

3. Though several questions were urged before the learned Single Judge, only two-fold submissions were made before us in this appeal. As before the learned Single Judge and so before us it was contended that in view of the end-product oriented policy of the Government of India the petitioner had to apply to the Chief Controller of Imports and Exports to issue it a license as per end use. The amendment in the license was made due to this change in policy. It was, Therefore, urged that though the paper imported was the tissue paper-machine glazed and machine finished, the end use was only to make use of the same for Napkins and Serveittes tissue paper - It was, Therefore, contended that the respondents were not justified in holding that the goods imported were not covered under the Import license.

4. We have perused the Import Trade Control Policy for the periods 1965-66 and 1968-69 and perusal of entry No. 160 of the above said policy for the year 1965-66 shows that machine finished tissue paper was allowed as packing and wrapping paper for tea industry for actual users as it borne out from clause (i) against the said entry whereas tissue paper other than machine finished was allowed for end-product of paper napkins, toilet paper, paper hankies, etc. In the Import Trade Control Policy for 1968-69 machine finished tissue paper which was specifically mentioned as packing and wrapping paper in the 1965-66 policy is not mentioned at all. At appendix-16 napkins and Serviette tissue papers are specifically mentioned for the end use for making paper napkins and paper hankies as also paper serviette s. At the relevant time import of machine finished tissue papers which is generally used for packing and wrapping was specifically banned. It is not disputed that the appellant itself had declared the goods as machine finished tissue papers in the relevant bill of entry. As a matter of fact, only dull white tissue paper which was essentially used for the manufacture of napkins and serviette s whereas on inspection it was found by the respondent that the paper imported by the appellant was not dull white but pure white. The learned Single Judge, Therefore, rightly came to the conclusion having found that the goods imported do not conform to the specific description given in the license, particularly when the declaration of the appellate itself was that the goods in question were machine finished tissue papers which is a common variety of packing and wrapping paper, the Customs authority correctly found that the petitioner had imported goods not conforming to their license and against the policy prevailing during that period. This court rightly refused to

interfere in a finding of fact under Article 226 of the Constitution of India. If goods imported do not conform to the specific description the end use would not be relevant criteria to decide the question in controversy. We agree with the learned Single Judge that in the instant case the finding that the articles imported were machine finished tissue paper was arrived on the declaration made by the petitioner itself to that effect. It was Therefore, not open to the appellant to challenge that finding since this finding was based on material on record. The very fact that the appellant had got his import license amended to include napkins and Serviette tissue paper would go to show that it was abundantly clear to the appellant that there was difference between machine finished and machine glazed tissue paper, and the paper to be imported for napkins and serviette tissue paper.

5. The second contention made by the learned counsel for the appellant was that some other firms had imported a similar type of consignment but the goods of the said firms were cleared without imposing any penalty. A mere warning was given to these firms and the goods were released whereas the petitioner was charged a heavy penalty. It was, Therefore, contended that the appellant alone was singled out thereby the respondents had discriminated against the appellant. In the vary nature of things penalties cannot be uniform. No doubt even in matters of administrative decisions concerning penalties there should be evenhandedness penalties cannot be so grossly divergent as to appear them to be discriminatory and not within the usual ambit of discretion. The authorities have to take into account several factors before the penalty is imposed. In the present case no material has been placed on record to show that the discretion was exercised arbitrarily. Though leniency was shown to the other firms, a warning was given and a specific note was made that the Departments had treated the import of the said firms as a breach of the trade regulations but because of the extenuating circumstances of the case no penal action was taken against these firms. These concerns were further warned that the leniency shown would not be taken as a precedent for importing paper in disregard of the terms of the license in future. Therefore, in our view the learned Single Judge quite correctly decided the question against the petitioner.

6. The appeal filed by the appellant, Therefore, fails. We, however, make no order as to costs.