

(1994) 09 DEL CK 0025

In the Delhi High Court

Case No : Civil Writ Petition No. 1604 of 1991

C. L. Jain Woollen Mills

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 09-09-1994

Acts Referred:

Citation : (1995) 79 ELT 197

Hon'ble Judges : Devinder Gupta, J;D.P Wadhwa, J

Bench : Division Bench

Judgement

D.P. Wadhwa, J.—The petitioner, a partnership firm engaged in the manufacture of various types of yarns and fabrics and having an industry in Punjab, has filed this petition under Article 226 of the Constitution praying that a writ of certiorari or any other appropriate order of direction be issued calling upon the respondents to produce the record pertaining to clearance of 7821 kgs. of polyester filament yarn imported by the petitioner and sought to be cleared for home consumption against Bill of Entry No. 110822, dated 30th [sic] February 1990 imported in pursuance to Additional license No. P/L/3362086 dated 12 April 1989, and to quash the orders of (1) the Customs Authority confiscating the goods and imposing penalty on the petitioner and (2) that of Import Trade Control Authority enhancing the export obligation from 14,497.5 kgs. to 22,230 kgs. of polyester fabric. There are four respondents, these being Union of India in the Ministry of Finance; Collector of Customs, New Delhi; Central Excise & Gold (Control) Appellate Tribunal, New Delhi; and the Joint Chief Controller of Imports and Exports, Ludhiana.

2. In the Import and Export Policy for the period April 1988-March 1991, Chapter XIX related to "Duty Exemption Scheme". It is not necessary for us to refer to the scheme in detail except to note that an Indian exporter, who has firm order from a foreign buyer for export of particular goods (resultant products) to be manufactured by the exporter, is entitled to import certain raw materials for use in the manufacture of resultant products and that raw materials could be cleared

for home consumption without payment of import duty. For this purpose, the importer is to apply for grant of license which is called Advance license for import of the raw materials. The manufactured Goods (resultant products) could be manufactured either after having imported the raw materials as per quantity and valuation in the Advance license within a stipulated period, or in the alternative, the exporter during the processing of his application for advance license could procure the raw materials from the domestic market in the country and manufacture the resultant products and export the same. In both these eventualities, it is stated that the exporter would be entitled to have the raw materials imported without payment of any duty under the duty exemption scheme. The option is left with the exporter to adopt any of the two methods. For the purpose a book called "Duty Entitlement Exemption Certificate" is issued along with the Advance license wherein in Part "C" entitlement of the exporter for the raw materials is mentioned which he could import without payment of duty, and in Part "E" the export obligations are stipulated. Advance license is granted only after a high powered Advance Licensing Committee clears the case on an application filed by the exporter in the prescribed form. The Policy also provides for split licenses so as to facilitate the import of raw materials without payment of duty at different stages. The norms for import of a particular quantity of raw materials are mentioned in Appendix 13-C of the Import and Export Policy for the years 1988-91. This Appendix 13-C, in relevant part, is as under :-

"In the following types of cases the applications for the grant of licenses under Duty Exemption Scheme Whenever received are cleared on the basis of these norms :

-----							Sl.No.	Description					
Description	Qty. of	Qty. allowed	Qty. allowed	of the	of raw	Export for	import with						
duty	Export	material.	product	exemption	Product.	benefit	kgs kgs kgs.						
-----							1.	2.	3.	4.	5.	6.	
-----							xx	xx	xx	xx	xx	xx	
TEXTILES, READYMADE GARMENTS, HOSIERY AND KNITWEAR							xx	xx	xx	xx	xx	9.	
Fabrics	Filament	1	1.125	1.100	and Yarn	Hosiery made from	100% man-						
made	filament yarn/texturised	yarn.	xx	xx	xx	xx	12.	Acrylic	Acrylic	1	1.25		
1.20	Knitwears	Fibres	made	out	of	100%	Acrylic.						
-----							1.	2.	3.	4.	5.	6.	
-----							13.	Acrylic					
Acrylic	1	1.150	1.150	Knitwears	Yarn made out of	100%	Acrylic.	xx	xx	xx	xx		
-----							Item	No.	9	is			
relevant for our purpose.													

3. In pursuance to the Policy the petitioner applied for grant of advance license on 8 March 1989. The petitioner had already obtained a firm order for supply of 100 MTs (10,00,000 kgs) of polyester fabrics having minimum 65% polyester and rest viscose yarn (@ US \$.50/kg) from a foreign buyer based in Hongkong as per indent dated 2 March 1989. In the application for advance license which

was made in the proforma prescribed by the office of the Chief Controller of Imports and Exports all information was furnished by petitioner and it was stated therein that the resultant product viz. 100 MTs of polyester fabrics would be with minimum 65% polyester yarn and rest viscose yarn, and on these premise the petitioner requested for grant of advance license for the import of 1.10 lakh kgs (110 Mts) of filament yarn (man-made). The quantity of 110 Mts was applied for as per norms laid down against Item No. 9 under the heading of Textiles in Appendix 13-C above.

4. The petitioner was advance license on 12 April 1989. He was to carry out the export obligations of 100 Mts of polyester fabric having minimum 65% polyester and rest viscose of the value of Rs. 81.85 lakhs (FOB). The petitioner was allowed import of 110 Mts of polyester filament yarn of the CIF value of Rs. 54,54,900/- This license was split up into two on the request of the petitioner with details as under :-

-----						Date	Description
Export Value	Duty free import	Import of goods	ex Rs. (Qty.)	Value	ported.	Rs.	
-----						12-4-1989	
Polyester	12,99,525	15,947.25	kgs. 8,66,066	Fabric	(resultant product)		
25-9-1989	do	25,81,565	31,680	kgs	17,20,488		

Along with these licenses DEEC Book was also issued and in Parts "C" and "E" respectively particulars of the raw material to be imported and that of the resultant product to be exported were mentioned.

5. It is not disputed that against the split license dated 25 September 1989 the petitioner met the export obligations and also imported the raw material as mentioned therein. An entry to this effect was duly made in the relevant part of the DEEC Book. Against split license dated 12 April, 1989 a consignment of 7920 kgs. of filament yarn was cleared on or about 8 September 1990 and endorsement was duly made in the relevant part of the DEEC Book. This license, as noted above, was for the import of 15,947.25 kgs. of filament yarn, and thus, after the import of 7,920 kgs, a balance of 8,027.25 kgs. was till left to be imported as per endorsement in the DEEC Book. On 30 November 1989 polyester yarn weighing 7,820 kgs. was dispatched by one foreign buyer and when these goods arrived at Delhi Port (ICD), the petitioner filed the impugned Bill of Entry seeking clearance of the goods for home consumption without payment of import duty as per the Policy. It is not disputed that whole of the export obligations by this time had been met by the petitioner as envisaged in the licenses and as per the indent of the buyer at Hongkong. This time the Customs Authority raised objections to the validity of the import and did not clear the Bill of Entry. The principal objection of the Customs authority was that since the goods exported contained 65% polyester, the petitioner could import filament yarn against advance license only that quantity which was actually required for the purpose of manufacture of the resultant product and that the license had been wrongly

issued and was against the provisions of the Duty Exemption Scheme as per the Policy. The petitioner contested and complained to the joint Chief Controller of Imports and Exports, Ludhiana, who had issued the license. He was told by letter dated 8 February, 1990 of the Joint Chief Controller of Imports and Exports (respondent No. 4) that the advance license had been correctly issued to him and that this was for the import of filament yarn (man-made) against export of polyester fabrics having minimum 65% polyester and rest viscose yarn. The letter further said that as per the Import Export Policy 1988-91, Appendix 13-C at Serial No. 9, the party could import 100% man-made filament yarn (polyester) against the license in question. This letter, it appears, did not satisfy the Customs Authority and the Additional Collector of Customs proceeded to adjudicate the matter. He observed that against the advance license (split) dated 12 April, 1989 the petitioner had fulfilled the export obligations by exporting 12,295.5 kgs. on fabrics declaring them to contain minimum 65% polyester, having FOB value of Rs. 12,79,578/- under Shipping Bill dated 25 August, 1989. He said that the party had, thus, already cleared one import consignment of polyester filament yarn weighing 7,920 kgs, under Bill of Entry dated 8 September, 1989, and that other consignment of polyester filament yarn weighing 7,821 [kgs.] imported against the aforesaid advance license was under clearance at ICD. The Additional Collector said that as per norms in Appendix 13-C of Import Export Policy 1988-91, the petitioner was entitled to import only 10,365 kgs. of polyester filament yarn based on the quantity of this yarn actually used in the resultant products, and that the import license for duty free import of 15,741 kgs. of filament yarn was wrongly issued. He, Therefore, after calculating the quantity of polyester filament yarn used in the resultant product, held that import of a quantity of polyester filament yarn weighting 5,376 kgs. was unauthorised. By order dated 10 August, 1990 the Additional Collector of Customs directed confiscation of 5,376 kgs. of polyester filament yarn valued at Rs. 11.5 lakhs u/s 111(d) of the Customs Act, 1962. He, however, permitted the petitioner to redeem the goods on payment of Rs. 7 lakhs. He also imposed a personal penalty of Rs. 1 lakh on the petitioner u/s 112(a) of the said Act. The petitioner was also directed to pay appropriate duty on the imported goods. In this order of the Additional Collector of Customs reference is made to certain correspondence that was exchange between the Customs Authority and the Import Export Authority. Reference has been made to a letter dated 20/21, February 1990 of the Deputy Chief Controller of Imports and Exports, Ludhiana, to the Assistant Collector of Customs, that matter had been re-examined and that now the Import Trade Control Authority had raised the export obligation limit to 22,330 kgs. instead of 14,497.5 kgs. originally mentioned in the DEEC Book, and that that authority had asked the petitioner to produce the license and DEEC Book for necessary amendments. The objections of the petitioner that license had been validly issued; that the Customs Authority had no jurisdiction in the matter; that it had merely to look at the license; that wrong interpretation was being applied to the Import Export Policy; that whole of the export obligations had been fulfilled ,and that petitioner was entitled to duty free import

of the consignment in question were overruled. It was also contended that the export obligations could not have been raised by the Import Trade Control Authority without notice to the petitioner.

6. The petitioner appealed to the Customs, Excise & Gold (Control) Appellate Tribunal against the aforesaid order of the Additional Collector of Customs. Without deciding the objection of the petitioner questioning the validity of the order of the Additional Collector of Customs, the Appellate Tribunal by order dated 21 March 1991 held that since the question of raising the export obligations would affect the validity of confiscation of the goods, payment of duty and imposition of penalty, an opportunity be given to the petitioner, in the interest of justice, to have the advance license and DEEC Book amended. The Appellate Tribunal then adjourned the matter for three months. This led to filing of the present petition on or about 27 April 1991. Only the second respondent the Collector of Customs, has filed his counter-affidavit opposing the petition. The fourth respondent the Joint Chief Controller of Imports and Exports, has not come forward to contest the claim of the petitioner in the petition. Mr. Madan Lokur, Central Government Standing Counsel, submitted that the impugned order of the Additional Collector of Customs was a valid order under the provisions of the Customs Act, and the Notification No. 116/88-Cus., dated 30 March 1988 issued under sub-section (1) of Section 25 of that Act, and further that since the appeal of the petitioner before the Appellate Tribunal was already pending, this petition was incompetent. By the notification referred to by Mr. Lokur, the Central Government exempted goods, imported into India against an advance license issued under the Imports (Control) Order 1955, being materials required to be imported for the purpose of manufacture of resultant products, from the whole of the duty of customs livable thereon which was specified in the First Schedule to the Customs Tariff Act, 1975, and from the whole of the additional duty livable thereon u/s 3 of the said Customs Tariff Act, subject to the following conditions, namely :-

(a) the materials imported are covered by a Duty Exemption Entitlement Certificate (hereinafter referred to as the said Certificate), issued by the licensing authority in the form specified in the Schedule to this notification, in respect of the value, quantity, description, quality and technical characteristics, as specified in Part "C" of the said Certificate;

(b) the importer at the time of clearance of the imposed materials makes :-

(i) a claim in writing to the Collector of Customs for such exemption and executes a bond or legal undertaking before such authority as may be approved by the Central Government for complying with the conditions specified in this notification;

(ii) a declaration before the Assistant Collector of Customs binding himself to pay on demand an amount equal to the duty livable but for the exemption, on the imported materials in respect of which the conditions specified in this notification

have not been complied with;

(c) the goods corresponding to the resultant products and the mandatory spares, in respect of value, quantity, description, quality and technical characteristic, as specified in Part "E" of the said Certificate are exported within the time specified in the said Certificate or such extended period as may be granted by the licensing authority or the Committee;

(d) the exempt materials shall be utilised for the manufacture of resultant products specified in Part "E" of the said Certificate or for export as mandatory spares, and no portion thereof shall be sold loaned, transferred or disposed of in any other manner.

Other provisions of the notification do not appear to be relevant for our purposes.

7. Mr. G. L. Rawal appearing for the petitioner submitted that it was not open to the Customs Authority to go behind the license, and that once the export obligations having been met in terms of the advance license which contained obligations and entitlements, the Import Trade Control Authority could not vary the conditions of the advance license, or impose more obligations and reduce the entitlements, and that too without notice to the petitioner. Mr. Rawal said no extra burden could be placed on the petitioner to increase the export obligations without the petitioner being granted opportunity of being heard. It was submitted that the Customs Authority was bound to release the goods in terms of the license so produced when the import was in terms of the import license.

8. The Import Trade Control Authority and the Customs Authority operate in different fields, though their functions are complementary to each other. They do not function for cross purposes transgressing the jurisdiction of each other. They have to exercise their functions under different enactments : the Import Trade Control Authority under the provisions of the Imports and Exports (Control) Act, 1947 [since repealed by the Foreign Trade (Development and Regulation) Act, 1992], and the Imports (Control) Order and the Exports (Control) Order issued under that Act, and, of course, the grant of license under the Exports and Imports Policy; and the Customs Authority under the provisions of the Customs Act, 1962, and the Customs Tariff Act, 1975. Thus the Import Trade Control Authority would issue the import license and the Customs Authority will see that the import so made is in accordance with that license and the proper import duty is paid and goods released after completing required formalities. This, of course, may appear to be a rough distinction between the two authorities, but explains their jurisdiction in the matter of the import of goods in the country. Under the Imports (Control) Order, 1955, as per clause (7), the licensing authority may, of its own motion or on an application by the licensee, amend any license granted under that Order in such manner as might be necessary to make such license conform to the provisions of the Imports and Exports (Control) Act, 1947, or the Imports (Control) Order or any other law for the time being in force, or to rectify and errors or omissions in the license. Under clause (10) of this Order, no action

under clause (7) shall be taken against a licensee or an importer or any other person unless he has been given a reasonable opportunity of being heard. In the present case what happened was that though earlier the Import Trade Control Authority took the stand that the advance license had rightly been issued, it would appear that at the instance of the Customs Authority it increased the export obligations to 22,330 kgs. instead of 14,479.5 kgs., originally mentioned in the DEEC Book, and required the petitioner to produce the license and DEEC Book for necessary amendments. No opportunity was granted to the petitioner while increasing the export obligation limit. The Import Trade Control Authority also failed to notice that for grant of advance license there had to be firm order from a foreign buyer. There was no such order with the petitioner for supply of the enhanced quantity of material to any foreign buyer. The action of the Import Trade Control Authority, Therefore, in increasing the export obligation limit, was illegal. The Customs, Excise and Gold (Control) Appellate Tribunal also fell into an error when by its impugned order dated 21 March, 1991 it required the petitioner to have the advance license and DEEC Book amended. It had no jurisdiction of its own to give such a direction to the petitioner. The function of the Appellate Tribunal was to see if the impugned order of the Additional Collector of Customs was valid or not under the provisions of the Customs Act and keeping in view the notification aforementioned issued under sub-section (1) of Section 25 of the Act. It could not be disputed that even as per the terms of the notification, the goods satisfied all the conditions as mentioned in the advance license and that specified in Part "C" and Part "E" of the DEEC Book. The Customs Authority of its own could not impinge upon the jurisdiction of the Import Trade Control Authority, and thus proceed to adjudicate and hold the imports to be unauthorised and order confiscation of the goods so imported and impose a penalty on the petitioner. It is nobody's case that the advance license had been issued on the basis of any misrepresentation or fraud committed by the petitioner or that there was any breach or contravention of the conditions subject to which the advance license was issued. There was no action by the Import Trade Control Authority to invalidate the license. The Import Trade Control Authority also did not contend that there was any breach of the Imports and Exports (Control) Act, 1947, or the Imports (Control) Order, 1955. In these circumstances, it has to be held that the import was valid and the action of the Customs Authority is wrong. The Appellate Tribunal also failed to correctly exercise jurisdiction vested in it by law. Various judgments were referred to during course of arguments to contend that Customs Authority could not go behind the license issued by the Import Trade Control Authority. We may only note some of these : (1) East India Commercial Co. Ltd., Calcutta and Another Vs. The Collector of Customs, Calcutta, ; (2) Union of India (UOI) Vs. Tarachand Gupta and Bros, ; (3) Bussa Overseas and Properties (Private) Limited and another Vs. Union of India and another, ; and (4) Union of India and another Vs. Sampat Raj Dugar and another, .

9. Mr. Rawal had raised another argument that under Item 9 under the heading

"Textiles, Readymade Garments, Hosiery and Knitwear" in Appendix 13-C of the Imports and Exports Policy, it was not required that the fabric should have been made of 100% of filament yarn imported by the petitioner and in this connection he sought distinction with items 12 and 13 where it was clearly mentioned "Acrylic Knitwears made out of 100% Acrylic" fibres or yarn. We do not think it is necessary for us to go into this argument though it may appear interesting, because of the view which we have taken regarding the action of the Customs Authority which we held to be illegal.

10. Accordingly, the petition is allowed and the order dated 10 August, 1990 of the Additional Collector of Customs and that dated 21 March, 1991 of the Customs, Excise and Gold (Control) Appellate Tribunal are set aside and a direction is issued to respondent No. 2 to release the goods of the petitioner forthwith.

11. At the time when this petition was filed, by an interim order dated 27 November 1991 it was directed that the imported goods be released to the petitioner on his paying a sum of Rs. 5 lakhs to the Customs Authority and thereafter, after release of the goods, the petitioner was directed to furnish a bank guarantee for another sum of Rs. 5 lakhs. It was also mentioned that in case of petitioner's success he would be entitled to refund of the amount so paid with interest at the rate of 17.5% per annum. We are told that the petitioner could not comply with this order and the goods still lie confiscated with the second respondent. Since we have held the action of the Customs Authority to be illegal, we further direct that the goods in question be released to the petitioner without payment by it of any detention or demurrage charges. In ordering so we are following the decision of the Supreme Court in Akbar Badrudin Jiwani of Bombay Vs. Collector of Customs, Bombay, . Petitioner would also be entitled to costs. Counsel fee Rs. 2,500/- Rule is made absolute.