

(1996) 11 SC CK 0179

In the Supreme Court Of India

Case No : Civil Appeal No's. 2951-53 of 1987

Collector of Customs, Bombay

APPELLANT

Vs

East Punjab Traders and Others

RESPONDENT

Date of Decision : 06-11-1996

Acts Referred:

Customs Act, 1962 — Section 139, 14

Citation : (2002) 79 ECC 469 : (1997) 89 ELT 11 : (1998) 9 SCC 115

Hon'ble Judges : A. M. Ahmadii, C.J.; Sujata V. Manohar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. These appeals are directed against the decision rendered by the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi (for short "CEGAT"). The facts lie in a narrow compass. The respondents before us imported 100% Polyester Lining Material of the width of 44 inches. The shipments arrived on 4-11-1983 and 2-12-1983. The Bills of Lading were dated 25-3-1983 (Raya Glory), 23-4-1983 (Raya Fortune) and 20-4-1983 (Portoroz). The total quantity was 3,01,393 yards and the value was declared to be Rs. 10,86,375. Twenty-nine Bills of Entry were filed. The Special Investigation and Intelligence Branch of Bombay Customs House suspected that these 29 Bills of Entry were fabricated insofar as the description of the goods, invoice values and the date of shipments were concerned. The Bills of Entry were, therefore, seized and taken over for investigation. During the course of investigation the office premises of the respondents' firms at Bombay were searched and certain documents were recovered. Ten consignments out of 29 were also examined by the Customs officials in February, May, October and November of 1984.

2. These investigations, according to the Department, revealed that the date shown in the Bills of Lading presented along with Bills of Entry were incorrect insofar as the actual shipment of the goods on board the vessels at Japan were concerned. The correct dates were stated to be 25-10-1983 (Raya Glory),

19-11-1983 (Raya Fortune) and 20-10-1983 (Portoroz) and it was further found that the licences under which the goods were cleared had actually expired and that the incorrect dates shown on the Bills of Lading were with a view to enable import under expired licences. So far as the value of the imported goods are concerned, inquiries were made in Japan and on scrutiny of the documents secured by the officer who personally visited Japan it was found that the true value in US dollars of the consignment shipped were: Raya Glory: \$ 80.65 CIF, Raya Fortune: \$ 89.78 CIF, and Portoroz: \$ 100.25 CIF, The FOB values in Japanese yen were also given in these documents. On receipt of the above valuation the average value of the different types of consignments shipped was worked out as: Raya Glory: \$ 1.053 per yard, Raya Fortune: \$ 0.818 per yard and Portoroz: \$ 0.869 per yard whereas the invoice value of these goods declared by the respondents was \$ 0.35 CIF which, according to the Department, was clearly undervalued.

3. On the basis of this material, a supplementary show-cause notice was issued on 16-5-1984 covering the Bills of Entry included in the original show-cause notice of 12-4-1984. The charge leveled was twofold, namely, (7) that the imported material was not lining material but polyester fabric covered under Item 25 of Appendix 4 of the ITC Policy April-March 1982-83; (2) that the Bills of Lading were antedated and the declaration as to value was false to the extent of Rs. 7,08,744 resulting in loss of duty of Rs. 9,56,804.40 paise. This was on the basis that the net price should have been 87.5 cents as against the declared value of 35 cents. The respondents contested these allegations made in the show-cause notices issued in respect of the goods in question. The Collector of Customs held that the evidence did establish that there was manipulation of the date of shipment on the Bills of Lading but concluded that the importers were not personally responsible for the same. He further held that the imported material was not lining material but was man-made fabrics which were banned for import and accordingly held that the licences produced were invalid for the imported consignments. He also found that the declared price was undervalued and that the price as found in the export declaration was acceptable as assessable value u/s 14(l)(a) of the Customs Act, 1962 which was far higher than the value declared by the respondents in the Bills of Entry. On these findings he held the charges established and ordered absolute confiscation of the goods and in addition imposed a penalty on the respondents M/s. East Punjab Traders of Rs. 10 lakhs, M/s. Janata Traders of Rs. 6 lakhs and M/s. P.C. Jain & Company of Rs. 1.5 lakhs.

4. Against the aforesaid order of the Collector of Customs, Bombay, dated 27-5-1985 three appeals were preferred by the afore-mentioned respondents and these were heard together by a three-member Bench of CEGAT and were disposed of by a common judgment dated 28-2-1987. There was a difference of opinion. Shri K.S. Venkataramani, Member (Technical) affirmed the view taken by the Collector whereas the other two members Shri M. Gouri Shankar Murthy, Member (Judicial) and Shri D.C. Mandal, Member (Technical) upheld the contentions urged on behalf of the respondents. The majority took the view that

the imported material was lining material which fell within the List of Materials permitted for import, namely, Item No. (vi) in the Import and Export Policy, April 1982-March 1983, in Appendix 17 under the main Item 0.1 "Cotton ready-made garments, hosiery and knitwear" and the relevant Item (vi) being lining and inter-lining materials excluding nylon taffeta coated fabrics (25%)". The majority also came to the conclusion that the material collected by the officer from Japan was inadmissible in evidence as the documents were copies of copies not duly authenticated and could not, therefore, be relied upon for concluding that there was a misdeclaration of value as alleged by the Customs authorities in the show-cause notices.

5. The single Technical Member, who wrote the minority judgment, however, held the view that it was not essential on the part of the Customs Officer to strictly prove the documents as required by the Evidence Act and that the authenticity of the documents, though copies, could not be doubted as they had been collected by the Collector from foreign sources and could be admitted in evidence by virtue of Section 139(ii) of the Customs Act, 1962 which permits the raising of a presumption in respect of documents received from any place outside India in the course of investigation of any offence alleged to have been committed by any person under the Act. The majority points out that these documents, which are photocopies, do not bear the signature either of the exporter, the forwarding agent, the stevedore or the Customs Officer. In fact, they do not bear any signature whatsoever and, therefore, the authenticity of these documents is suspect and it is not possible to presume that the originals are duly signed. It is for this reason that the majority did not consider it safe to place reliance on photocopies of copies of the documents recovered by the Customs Officer not from the Customs Department in Japan but from the agencies which are stated to have exported the material in question. It is also found that one of these copies of the alleged declarations bears the seal of the Customs at Kobe and the name of the vessel is shown to be 'Raya Fortune' but the itinerary of that vessel collected at the instance of the Indian Customs shows that the said vessel had never touched Kobe which raises a serious doubt as to how far this document is authentic. The majority raises the question as to how the declaration at Kobe and shipment from Osaka are reconcilable noting that there is no explanation coming forth. The majority feels that the authenticity of the documents itself is suspect. In these circumstances, the presumption to be raised u/s 139(ii) of the Customs Act could not be raised because the document did not bear any signature, did not come from proper custody and it is difficult to understand why the Indian Customs did not interact with the Japan Customs and obtain authentic copies of the document from the latter. Merely because the Department offered cross-examination of the steamer agent from whom the export declaration had been obtained and the respondents chose not to avail of that opportunity is no ground for holding that the requirements of Section 139 are satisfied for the purpose of raising the presumption. In order to raise the presumption under the said provision, the basic facts had to be laid. Even though they bear a serial number

and stamp of Japan Customs, the fact remains that they are copies of copies and indisputably bear no signature of the exporter, the forwarding agent, the stevedore or the Customs Officer; no signature at all of any of them. The discrepancy in regard to copies bearing the seal of Customs at Kobe also raises a serious doubt whether the copies relate to any of the consignments in question. In these circumstances, if the majority was disinclined to place reliance on these documents we find it difficult to hold that it was in error in doing so.

6. The difference in the value is again worked out on the strength of these very documents. Once these documents are out of consideration the difference in the value also disappears. It is, therefore, not necessary for us to discuss the evidence on the question of the value of the consignments since the Collector of Customs had reached the conclusion that there was an incorrect declaration made by the respondents in regard to the value of the consignments on the basis of these documents.

7. The next question relates to the classification of the goods in question. The issue is whether the imported goods fall within the description "lining material" or "fabrics, made from man-made fibers/yarns" falling at Item 25 of the list of non-permissible items for import under Appendix 4. If the goods are lining or inter-lining materials excluding nylon taffeta coated fabrics (25%) there is no dispute that the said material could be imported under the REP licences held by the respondents. The learned counsel for the appellant did not question the validity of the licences for the reason that even the Collector of Customs had not held the respondents responsible for the discrepancy in the dates to which we have already referred. One ground on which the Collector of Customs came to the conclusion that the material was not lining material is that in the Import and Export Policy document of April 1984-March 1985 Entry (vi) in Column 4 of Appendix 17 was changed, in that it mentioned lining and inter-lining materials of width not exceeding 87 1/2 cms excluding nylon taffeta coated fabrics (10%). Two changes were made, the first relates to the introduction of the prescription as to width and the second relates to the percentage being reduced from 25% to 10%. We are not concerned with the latter. The Collector of Customs relied on this change and concluded that it was only clarificatory in nature and, therefore, Entry (vi) in Column 4 of Appendix 17 of the Import and Export Policy April 1982-March 1983 must also be read as limiting the width to 87 1/2 cms (approximately 35 inches). The consequence of this interpretation would lead to certain penal liabilities in regard to payment of penalty, etc., and therefore, we find it difficult to hold that this entry prescribing the limit of the width has to be read retrospectively. The majority was clearly of the opinion that such an interpretation would lead to unforeseen consequences so far as the importers are concerned and many of them who imported lining material of the width exceeding the prescription would become liable to penalty, etc. We think that this view taken by the majority is unassailable.

8. The Collector of Customs relied mainly on his own subjective satisfaction in

coming to the conclusion that the material in question was not lining material. The majority examined from the relevant material placed before it what would fall within the expression "lining material". After referring to the Collector's order in this behalf the majority pointed out the contradictions in para 7 of its decision and came to the conclusion that the basic authorities accepted by both parties went to indicate that the material in question was lining material. This is a question of fact and ordinarily this Court would be disinclined to reopen the question of fact, the Tribunal being the last fact-finding authority. It is not clear that the majority view of the Tribunal in this behalf is not based on basic authorities even if the expert opinion of consumers of such material is ignored. It is rightly pointed out that if the opinion evidence adduced on either side is ignored and if the opinion of the Textile Commissioner is also brushed aside as the Collector had done, what is left to be considered is the relevant policy and the Collector's subjective satisfaction; that is, his own expertise. The majority after examining the basic authorities and after pointing out how the Collector's expertise based on Shri Sharma's opinion ran contrary to the basic materials, has rejected his conclusion. The approach adopted by the majority could not be said to be erroneous in any manner whatsoever. Besides, as stated earlier, this being a question of fact we see no reason why we should take a different view than the one taken by the majority. We, therefore, come to the conclusion that the material in question is lining material.

9. In the result, we see no merit in these appeals and dismiss the same but make no order as to costs.

10. The interim order dated 1-8-1988 will stand vacated and the respondents will be at liberty to withdraw the money.