
(1960) 08 BOM CK 0012

In the Bombay High Court

Case No : Appeal No. 4 of 1959 and Miscellaneous Application No. 436 of 1958

D.P. Anand

APPELLANT

Vs

T.M. Thakore and Co.

RESPONDENT

Date of Decision : 17-08-1960

Acts Referred:

Customs Act, 1962 — Section 19

Citation : (1960) 08 BOM CK 0012

Hon'ble Judges : Shah, J;J.R. Mudholkar, J

Bench : Division Bench

Advocate : Rangnekar, for the Appellant;

Judgement

1. This is an appeal against an order made by Mr. Justice Shelat in Miscellaneous Application No. 436 of 1958. The Respondents before us were Petitioners before Mr. Justice Shelat. They were challenging the three orders passed by the Collector of Customs at Bombay on 12-7-1958 confiscating certain motor accessories imported into India by the Petitioners and levying a personal penalty and fine on the Petitioners for having contravened the provisions of Section 167(8) of the Customs Act.

2. It is admitted that the respondents are carrying on business of sale of auto-spare parts in Bombay. They obtained an Established Importers' Licence for importing auto spare parts and in pursuance of that licence they placed for indents with a British Manufacturer Quickly Motor Cycle. All the indents were sent by them on the same day. It is not disputed before us that with the spare parts ordered in these four indents 30 almost complete auto cycles could have been assembled with the exception of tyres, tubes and saddles. The consignments arrived in India by four different steamers on different dates. The goods under the first indent arrived in India by S. S. "Navigator" on 28-10-1957 those under the second indent by s. s. "Pioneer" on 13-11-1957, those under the third indent by s. s. "Holmialand" on 2-12-1957 and those under the fourth indent by S. S. "Jal Govind" on 26-11-1957. The consignment on the fourth indent consisted of

engines. A bill of entry with respect to this consignment was filed by the respondents with the Customs Authorities on 31-11-1957 and this consignment was cleared on 3-1-1958. The bills of entry regarding the other consignments were filed in January and February, 1958. The engines were sold by the Respondents to a firm in Calcutta and it has been found that they were actually despatched to Calcutta on 4-1-1958.

3. When the Respondents tried to take delivery of the remaining three consignments the Custom Authorities stood in their way. Proceedings were commenced against the Respondents, under the Sea Customs Act and after giving an opportunity to the Respondent to be heard, the Collector of Customs passed orders confiscating the goods of those consignments and also levying personal penalty and fine against the Respondents. The ground on which the Collector of Customs confiscated the goods and penalised the Respondents, was that the Respondents had contravened the terms of their licence which prohibited them from importing into India motor cycles in a completely knocked down condition. According to the Collector, only approved manufacturers were permitted to import auto cycles in completely knocked down condition, in consultation with the "Development Wing". From this, the Collector drew the inference that no one else was permitted to import spare parts of auto cycles which could be assembled into an almost complete auto cycle. According to the Respondents their licence permits them to import articles adapted for use as parts and accessories of auto cycles under items 293, 295 and 297 contained in section II of "Import Control Policy" statement issued by the Government of India. Their contention was accepted by the learned single Judge who held that the orders passed by the Collector were erroneous and he accordingly quashed those orders.

4. Against the order of the learned Single Judge, the Respondents, the Collector of Customs, Bombay and the Union of India have come up in appeal. It seems to us that the learned single Judge was perfectly justified in quashing the orders of the Collector. The entries 293, 295 and 297 contained in Section II of the Policy statement run thus, -

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Description	Remarks	No.	of	I.T.C.			Schedule
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(other than rubber tyres tubes N.C. vide and iron steel bolts and nuts for motor Appendix I. The cars) adapted for use as parts and detailed. accessories of motor cars, including Licensing policy taxi cabs but excluding those mentioned is given in in Part II of the Scheduled. Appendix XXVI. 295 Articles (other than rubber tyres and N.C. vide tubes) adapted for use as parts and Appendix I. The accessories of motor cycles and motor detailed scooters, except such articles as Licensing Policy are also adapted for use as parts is given in and accessories of motor cars. Appendix XXVI. 297 Parts of mechanically propelled vehicles N.C. vide and accessories, not otherwise specified, Appendix I. The excluding rubber							

tyres and tubes and detailed such parts and accessories of motor licensing vehicles included in Item No. 75(3) of policy is given the first Schedule to the Indian Tariff in Appendix XXVI Act, 1935, as are also adapted for use as parts and accessories of motor cars.

5. It will be clear from these entries that a person who has obtained a licence which refers to any one of these entries is entitled to import articles adapted for use as parts and accessories of auto vehicles. Entry 295 in particular would cover the goods of the Respondents as thereunder Articles other than rubber tyres and tubes adapted for use as parts and accessories of motor cycles and motor scooters are permitted to be imported. There is no restriction for import of parts and accessories to motor cycles which when taken together can be assembled into a complete motor cycle. What the Collector had to satisfy himself was whether by reference to entry 295 or to either of two remaining entries mentioned in that licence, the articles imported by the Respondents could be said to have been not covered by any of them. If he had proceeded from that point of view he could have seen that the imports were completely covered by the licence. Since the imports covered by the licence were permitted to be imported he could not carry his enquiries any further. However, as it happened he considered all the four tyres, tubes and saddles the parts and accessories imported by the Respondents could be utilised for assembling 30 auto cycles and that the Respondents had thus in effect imported 30 auto cycles in a completely knocked down condition though they did not possess a licence under entry 194 for importing into India auto cycles in a completely knocked down condition. It is true that the Respondents did not possess a licence referring to entry 294 and indeed the Respondents not being approved manufacturers of auto vehicles could not have secured a licence under entry 294. But that was not what the Collector had to ascertain. His duty was to satisfy himself whether the licence which the respondents possessed permitted them to import the articles indented for by them and which actually arrived in India in four different consignments by four different steamers. In our opinion, therefore, the Collector's approach to the matter was wholly wrong and, therefore, the learned Single Judge was justified in quashing his orders.

6. Mr. Rangnekar, who appears for the Appellants, contended that High Court in its writ jurisdiction does not sit in appeal over the Collector's orders and so it cannot interfere with his decision unless it comes to a finding that the Collector had acted in an outrageous manner. As we have already indicated, in our opinion, the Collector's approach to the matter was wholly wrong. u/s 167(8) of the Sea Customs Act, if any goods importation of which is for the time being prohibited or restricted by or under Chapter IV of the Act, be imported into India contrary to such prohibition or restriction, the Collector has the power to confiscate the goods and also to levy penalty and fine on the importer. It is not disputed before us that section 19 of the Act, which is one of the sections comprised in Chapter IV empowers the Central Government to prohibit or restrict

the importation or exportation of goods and imports into India and regulated it by issuing licences. Therefore, a person can only import into India goods of such description as the licence permits him to import. Now here, the Respondents had a licence in their favour and, therefore, what the Customs Authorities had to satisfy themselves was whether the goods imported by the Respondents were permitted to be imported under that licence. If they were so permitted, then the matter ended there and the Collector had to do nothing. Before taking any action u/s 167(8) or under any of the other provisions of the Sea Customs Act, the Collector had to come to a definite finding that the importer had contravened the provisions of the Act or of his licence. Now here, the Collector no doubt held the Respondents having imported into India some articles which were not permitted to be imported into India, but this conclusion was drawn by him not by reference to the licence held by the Respondents, but by reference to entry 294 in column 6 by which certain restrictions have been laid down for the import into India of motor cycles in a completely knocked down condition. For one thing, what the Respondents had imported was, "parts & accessories" though under one licence under four different consignments. Again the articles imported by them were inadequate for assembling 30 complete auto cycles, for the simple reason that no tyres, tubes and saddles could have been provided for the auto cycles. It is admitted before us that the tyres and tubes used on these motor cycles are not of the standard type and are not manufactured in India. There is nothing to show whether the saddles used on these motor cycles were of the standard type. In the circumstances, therefore, it could not be said that by following a devious method the Respondents could be said to have imported 30 motor cycles into India in a completely knocked down condition. The Collector's conclusion that this is what the Respondents intended to do, was the result of an erroneous approach to the matter, and, therefore, interference in the writ jurisdiction was permissible. Upon this view, we uphold the order of the learned Single Judge and dismiss the appeal with costs.