

(1964) 11 KL CK 0002
In the High Court Of Kerala
Case No : O. P. No. 1425 of 1963

Fancy Crockerries, Ernakulam

APPELLANT

Vs

Collector of Customs and Another

RESPONDENT

Date of Decision : 17-11-1964

Acts Referred:

Evidence Act, 1872 — Section 106

Sea Customs Act, 1878 — Section 167(8)

Citation : (1965) KLJ 399

Hon'ble Judges : K. K. Mathew, J

Bench : Single Bench

Advocate : V.K. Hamsa, for the Appellant; M.U. Isaac, for the Respondent

Final Decision : Allowed

Judgement

K.K. Mathew, J.—The petitioner in this case-Fancy Crockerries-is a dealer in crockery. It carries on its business in Broadway, Ernakulam. The petitioner states that it is not an importer of foreign crockery but that the foreign crockery was being imported into India until they were banned and that there is a huge stock of foreign crockery available in Bombay and other places. On 25-1-1962 a party of Preventive Officers of the Customs Department, after obtaining a warrant from the District Magistrate, searched the petitioner's place of business and seized 84 items of crockerries under a mahazar. It is stated that the goods seized were worth more than Rs.10,000/- P. A. Mohammed, who is the managing partner of the petitioner-firm gave a statement before the officers explaining that the goods seized formed part of the stock purchased from established firms in Bombay and also from local merchants in the bona fide belief that they Were imported before the ban was introduced. He also requested for release of the goods by his letter dated 8-2-1962. Thereafter the petitioner was asked to produce its stock register and bills and they were produced. On 21st March, 1962, a show cause notice was issued by the Assistant Collector of Customs to the petitioner stating that invoices relating to 50 out of the 84 items seized were found not to agree with

the goods seized. A reply was sent to the show cause notice. Ext. P.4 is a copy of the same. Together with the reply, seven affidavits from various merchants at Bombay with copies of invoices to prove that the items were imported by them before the ban was introduced were also sent. The Assistant Collector of Customs, after considering the explanation, passed Ext.P.2 order holding that 22 items were imported in contravention of Section 167 (8) of the Sea Customs Act and were liable to confiscation. He however, directed their redemption on payment of duty and penalty. The petitioner paid the duty and the penalty and got the goods released. Against Ext. P.2 order the petitioner filed an appeal before the Collector of Customs. Ext. P.5 is a copy of the memo of appeal. The Collector passed Ext.P.3 order dismissing the appeal. The petitioner questions the validity of Exts. P. 2 and P. 3. The main submission of counsel for the petitioner was that there was absolutely no evidence to show that the goods were imported into the country after the ban was imposed against the importation of these types of goods. The Assistant Collector of Customs after slating the facts says in his order Ext. P. 2:

Regarding item No. 62 (ALFRED Meakin English tea set, 15 pieces, the original invoice cited was objected to and the party produced another invoice No. 25 dated 8-11-60 which described the item as tea set Alfred gold border and the affidavit described it as Alfred made in England. In the reply to the show cause memo the firm had mentioned that "Alfred" indicated Japanese products and as such the item cannot be treated as covered by the invoice. Item 68 is cups and saucers yoshino whereas the documents produced show the item as Yamaka. Item 54 was supported by an affidavit from M/s. S. M. Padmasee but the branch was not mentioned and the invoice was not submitted. Same is the case with items 55 and 56. Regarding items 29 and 38, the party's contention that the value indicates the foreign manufacture of the goods is true but the particulars of origin was not indicated in the invoice. Regarding item 23 the party cited a new invoice which was however not submitted. As such the previous invoice which did not contain correct description cannot be accepted. Regarding item 49 neither the affidavit nor the invoice contained the branch or country of origin and as such cannot be accepted. Regarding items 25, 26 and 53 objection raised on the original invoices that the branch and country of origin were not furnished was not answered by the party. Regarding 75 and 76 the invoices and the affidavit filed does not show the country of origin of the goods and so cannot be accepted. Items 79 and 83 are stated to be covered by Invoice of M/s. Diamond Co. The invoice though stated to have been shown to Assistant Collector is not filed as evidence and as such the items cannot be identified as legally imported. As regards item 80 the invoice produced docs not show country of origin or other identifying marks. This applies to items 6, 9 and 10 as well. Regarding item 11, the invoice cited cannot be accepted as the country of origin is not given and the description shown is different. In regard to item 19, the country of origin or brand is not indicated in the invoice and therefore it cannot be accepted.

The stock registers produced did not pertain to the whole period during which

goods under reference were acquired and contained various discrepancies. Therefore those could not be relied upon for evidentiary value.

In the appeal the Collector of Customs after stating the facts has passed a very short order saying that he does not see any reason to interfere with the order of the Assistant Collector. But in the narrative portion of the order he has stated:

I have carefully considered the appeal. In respect of the goods which were confiscated the appellant could not show that they were actually purchased "bona fide" from dealers. When no evidence of purchase is available, it has to be assumed that they were imported illegally. When the importation of the goods has been banned for the last 5 years or so, the natural presumption is that there could be no legal importation of the goods. When this presumption exists, it was certainly the responsibility of the appellants to prove that they were legally imported before the ban. This onus is independent of Section 178-A of the Sea Customs Act. The trade practice is normally to prepare the invoice in such a manner as to identify the goods. If the invoices are not so prepared there is a departure from normal trade practice. Wherever description of the articles in the invoices was adequate for identification purposes, benefits of doubt have been given to the party. The goods are not connectable with the invoice or any other document and their legal importation has not therefore been established.

Petitioner's Counsel cited before me the rulings reported in *Devichand & Co. v Collector, Central Excise* (A. I. R. 1960 Criminal Law Journal 925), *Ambe Lal v Union of India* (A. I. R. 1961 S. C. 264) *Gian Chand and Others Vs. The State Of Punjab*, *Nataraj Stores v Supdt. of Central Excise* (1964 K. L. J. 160) and *Hiralal Sarawgi v Collector of Central Excise and Land Customs for Assam*, and contended that the burden of proving that these goods were imported after the ban was imposed was on the Department, and that there was no evidence on the part of the Department to show that these goods were imported after the ban was imposed. It was also submitted that the mere fact that the petitioner was unable to explain with reference to the stock register and the bills the 22 items confiscated in this case was no ground for holding that these items were imported after the ban was imposed, and that the affidavits from the merchants in Bombay would prima facie indicate that the petitioner had purchased these goods from them.

2. It has been held by this court in 1963 KLT 1107 that the burden of proof in a case like this is upon the Department. The Department must show by evidence that the goods were imported after the ban was imposed. *H. Sarawgi v Collector, C.E. & L. Customs* (A.I.R. 1962 Assam 39) is a clear authority on the point. Section 106 of the Evidence Act is not attracted. (Sec AIR 1961 S. C. 264). The order passed by the Assistant Collector of Customs and the order affirming it in appeal by the Collector of Customs would show that these authorities laid the burden of proving the case that the goods were imported before the ban was imposed upon the petitioner. This, I think, is a manifest error of law. Mr. Isaac, appearing for the Department submitted that the proceedings in this case were

only against the goods seized and not against the petitioner, and therefore the fact that the petitioner was not able to give a reasonable explanation of his possession of these goods was sufficient proof that they were imported into the country after the ban was imposed. I find it rather difficult to accept the contention. Mr. Isaac did not content that the burden of proof in this case was not on the Department. His submission was that there was sufficient proof that the goods were imported after the ban was imposed because the petitioner failed to substantiate its case with reference to its stock register and the concerned bills. I am not satisfied that the Department has discharged the onus of proof cast upon them. The burden of proof was placed wrongly upon the petitioner. That is an error of law apparent on the face of the record. I therefore quash Exts. P2 and P-3 orders and allow the writ petition. No costs.