

(1987) 10 DEL CK 0020

In the Delhi High Court

Case No : Civil Writ Petition No. 194 of 1986

Fine Auto Products (India) and Another

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 30-10-1987

Acts Referred:

Citation : (1987) 33 DLT 384 : (1988) 35 ELT 466

Hon'ble Judges : Yogeshwar Dayal, J; Mahinder Narain, J

Bench : Division Bench

Advocate : Rajiv Dutta, for the Appellant;

Judgement

Yogeshwar Dayal, C.J.

(1) This writ petition is at the show cause stage. Show cause notice was directed to be issued as far back as on 27th January, 1986 by H.L. Anand & Sunanda Bhandre, JJ. Though at the earlier stage. Mr. Siri Pal Singh, Advocate had represented Miss Anita Sachdeva, Advocate who has been appearing on behalf of the respondents but despite repeated opportunities nobody appeared and the petition was listed before the Court. We have again heard Mr. Rajiv Dutta, Advocate for the petitioner but we find no merit in the submission of the learned counsel for admission of the writ petition. The writ petition itself is directed against appellate order dated 10th December, 1985 of Government of India, Ministry of Commerce (Appellate Committee Cell). Petitioner had obtained two import licenses dated 21st November, 1979 and 10th November, 1980.

(2) In order to verify the correctness of the value of past consumption as indicated in their applications for the grant of aforesaid licenses, the premises of the petitioner were inspected by a team of officials from the office of the Chief Controller of Imports & Exports. The petitioner could not produce any documents to substantiate the value of past consumption. A notice was issued to them on 11th March, 1981 asking them to show cause as to why the said license should not be cancelled for the reasons they had obtained the same by

misrepresentation and fraud and that same would not serve the purpose for which these were issued. A representative of the petitioner appeared before the Competent Authority on 8th April, 1981 and admitted they had obtained the licenses on the basis of consumption of indigenous material and not imported material. The licenses were then cancelled by the competent authority vide order dated 8th April, 1981. No appeal was preferred against this cancellation of import licenses but it was learnt from the Customs authorities that against the above licenses goods worth Rs, 6,49,470.00 and Rs. 5,08,661.00 had been imported.

(3) A notice was issued asking the petitioner to show cause why action should not be taken against them u/s 41(1)(c)(i) of the Imports and Exports (Control) Act and Clause 8(f) of the Imports (Control) Order. In the reply to show cause notice, the petitioner pleaded that since the licenses had already been cancelled, no other action should now be taken, It is submitted that the mistake had been committed due to oversight and inadvertently. The Competent Authority noticed that the value of goods imported against the licenses come two about Rs. 11.5 lakhs and the Act provides for a penalty up to five times the value. However, taking into consideration the fact that the petitioners are a small scale unit in operation and that they have admitted their mistake, the Competent Authority imposed a penalty of Rs. 2,00,000.00 jointly on the firm and/or its partners. The Competent Authority took the view that clause 8(l)(f) of the Imports (Control) Order is not attracted nor has any misutilization been established, Therefore, no departmental action is called for in this case under clause 8(l)(f) of the Imports (Control) Order.

(4) Against the imposition of penalty of Rs. 2 lakhs the petitioner preferred an appeal and were heard by the Appellate Committee and thereafter the impugned order dated 10th December, 1985 was passed. Appellate Committee noted that the licenses had been cancelled by the Competent Authority on 8th April, 1981 and the appeal by the petitioner against this order dismissed as barred by time. The Appellate committee noted that the statement made by the petitioners in their application for import license in regard to past Consumption and imported materials was false and the statement that they were illiterate and did not understand what they were signing was not adequate defense and the contention of the petitioner that because the licenses had already been cancelled, no other action can be taken against them is not valid.

(5) The Appellate Committee also noticed that Shri Hamid Khan, partner of the firm had appeared before the Committee and pleaded the case stating that it was a Small Scale Industrial Unit and the partners were illiterate and were not aware of the rules and, Therefore, requested for a lenient view to be taken in this case. The Committee examined the case in this light. The Committee noticed that till the end of 31st March, 1982 around 10% of the imported goods was left unutilised and based on this fact, the actual imports utilisation and quantities unaccounted for would be as follows : - 1. Total value of goods imported (including customs duty) Rs.23,13,543.00 2. Value of 10% of goods imported

(left unutilised) Rs. 2,31,354.00 3. Sale value of production out of imported goods as on 31.3.82 Rs. 13,87,652.00 4. Total of (2)(3) 5. Approx. value of the unaccounted goods imported (I)-(4) or say Rs. 16,19,006"- Rs. 6,94,537.00 Rs. 7,00 lakhs.

(6) Before the Appellate Authority again it was conceded by the petitioner that the past consumption indicated in their application for import license was based upon purchases made from local market whereas the licenses were issued on the basis of past consumption of imported raw material. Considering all these facts, the Committee took the view that it did not call for interference in the amount of penalty imposed by the Appellate Committee.

(7) It will thus be noticed that the appeal before the Appellate Committee was in the nature of mercy appeal. It is for the Authorities concerned to fix a penalty amount after considering all the facts. The Appellate Committee after considering the total value of goods imported including customs duty and the value of goods which remained unutilised and the alleged sale value of production of imported goods took the view that approximate value of unaccounted goods was roughly Rs. 7 lakhs and it is in this light that the Appellate Committee declined to interfere with the order of imposing penalty of Rs. 2 lakhs. It will be noticed by and large such orders of penalty are passed after considering all the facts in the discretion of the Appellate Committee. The discretion has been again subject matter of check before the Appellate Authority though under the Act the penalty could be five times the value yet the penalty imposed was of Rs. 2 lakhs. We find no reason whatsoever to interfere with the impugned order imposing penalty in the circumstances of the case. The show cause notice is accordingly discharged and the writ petition is dismissed.