
(1988) 03 BOM CK 0056
In the Bombay High Court
Case No : Writ Petition No. 1598 of 1981

General Spares Industries Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 30-03-1988

Acts Referred:

Citation : (1988) 17 ECR 184 : (1988) 36 ELT 562

Hon'ble Judges : R.A. Jahagirdar, J

Bench : Single Bench

Judgement

R.A. Jahagirdar, J.—This petition challenges the order dated 16th of December, 1980 passed by the Additional Chief Controller of Import and Exports, having his office at New Delhi, in an appeal preferred by the petitioners against the orders passed on 10th of January, 1980 and 7th February, 1980. These two latter order have been passed by the Deputy Chief Controller of Imports and Exports, Ministry of Commerce, having his office at Bombay.

2. The facts leading to these orders have been mentioned in great details in the petition. It is not necessary to refer to the same. Briefly stated, it may be mentioned that it is the case of the Department that the petitioners have imported certain articles on the basis of actual user licence, which licence was obtained by them on a misrepresentation that they would be manufacturing certain articles for which the articles which were being imported were necessary. The controversy, after one round of litigation, has now crystallised into a narrow point. It is the case of the department that the petitioners have imported certain articles, such as, for example, thin-walled bearing which article the petitioners were not entitled to import because they are not manufacturing anything in the making of which this article is used. On the other hand, it is the case of the petitioners that looking to the industrial licence, which has been obtained by them, even after its amendments from time to time, they are entitled to manufacture parts of the internal combustion engine. A crankshaft is one part of the internal combustion engine and the thin-walled bearing is a part which is

used in the manufacture of the crankshaft. It is rejoined by the department that the petitioners do not have the facilities for manufacturing crankshaft.

3. If the petitioners are manufacturing crankshaft and if the crankshaft is the part of the internal combustion engine, then, naturally, they would be using the thin-walled baring in the manufacture of the crankshaft. In other words, they would be using the same in the manufacture of a part of the internal combustion engine. If the import licence has been obtained on the ground that the imported product would be utilised in the manufacture of a part of the internal combustion engine, that part, in the instant case, being crankshaft, naturally, the petitioners would not have committed any offence or contravention of any rule or regulation. The basic question is whether the petitioners were, in fact, entitled to manufacture the crankshaft or whether they were entitled to manufacture parts of the internal combustion engine. This is disputed by the department on the basis of a report of the Director of Industries. A copy of the report of the Director of industries has not been given to the petitioners at any time. Only a summary of the report of the Director of Industries has been given. Obviously, it is not the summary alone which is a relevant document. Summaries of documents can be prepared by different people in different manners. Originally, there was a reference to the report of the Director of Industries. Obviously, therefore, the same must have been taken into consideration while issuing the show cause notice and while deciding the question as to whether the petitioners were entitled to manufacture a particular product. In my opinion, mere providing of the summary of the report of the Director of Industries is not in full compliance with the requirement of the rule of natural justice which says that no authority at the time of passing an order shall rely upon a document, a copy of which has not been given to the person against whom the order is to be passed. In view of this I am constrained to set aside the orders passed in the instant case. After these orders are set aside, the authorities are free to issue a fresh notice and along with the fresh notice, they will give copies of all the documents on which they want to rely, including obviously a copy of the report of the Director of Industries.

4. In the result, the petition is allowed. Rule is made absolute in terms of prayer clause (a).

5. In the meantime, the goods had already been sold by the department and the sale-proceeds have been deposited in a fixed deposit with a nationalised bank. The proceeds shall continue to be invested in a fixed deposit with a nationalised bank by the Prothonotary, including the accrued interest on the same. The parties may apply to the Court for obtaining an appropriate order for the payment of this amount after the import control authorities pass their orders and in the light of those orders. If however, within six months the final order is not passed by the deputy Chief Controller of Importers and Exports and if he passes such an order within six months and if the order-in-appeal is not passed within six months thereafter, then, on the happening of one or the other event, the parties are free to apply to this Court for the payment of the amount which has

been deposited pursuant to the order passed by Lentin, J.

6. There will be no order as to costs in this petition.