**(2000) 12 P&H CK 0172**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Criminal Misc No. 3094-M of 1990

Govind Swaroop Gupta APPELLANT

Vs

Dy. Chief Controller of Imports and Exports RESPONDENT

**Date of Decision :** 22-12-2000

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 482
Imports and Exports (Control) Act, 1947 — Section 5
Penal Code, 1860 (IPC) — Section 120

**Citation :** (2001) 2 RCR(Criminal) 542

**Hon'ble Judges :** A.S. Garg, J

**Bench :** Single Bench

**Advocate :** Mr. A.K. Aggarwal and Mr. Adarsh Jain, for the Appellant; Mr. S.D. Bansal, Mr. Vikram Namkani and Mr. Manish Jain, for the Respondent

# Judgement

A.S. Garg, J.—This judgment will dispose of Crl. M.No. 3094-M of 1990 and Crl. M. Nos 1599-M of 1987 as common questions of law and fact are involved.

2. The petitioner had imported 1046.50 M. Tonnes of inedible beef tallow from Hong Kong on 19.6.1983. Out of this total quantity of 1046.50 M. Tonnes a quantity of 996.482 M. Tonnes of beef tallow pertains to fair licences and balance quantity of 50.017 M. Tones was cleared against another licence. When the beef tallow was im- ported the question came before the Collector Customs. Calcutta and vide order dated 4.8.1983 the Collector of Customs cleared the consignment of beef tallow and the beef tallow so imported was released on payment of custom duty to the extent of Rs. 7,74,417.91 at the rate of 15 per cent which was paid. However, the said beef tallow allegedly stood imported without a valid licence and without permission of the Import and Export office of the country. The matter also went in appeal and the order of the Collector of Customs was not stayed in appeal before the Tribunal. It was observed that the import by respondent Nos. 2, 4 and 7 was lawful and valid. It was claimed that this article from which toilet soap is being prepared could be imported. The beef tallow, however, was banned in this country on 24.8.1983 and therefore, this beef tallow

on which custom duty had also been paid stood re- exported on 19.1.1985 and was not used/utilized in India, still a complaint u/s 120B of the Indian Penal Code read with Section 5 of the Imports and Exports (Control) Act, 1947 has been filed against the petitioner as beef tallow was imported without licence.

3. Vide order dated 3.1.1986 passed by the Special Judicial Magistrate 1st Class, Patiala, the petitioners were ordered to be summoned for having committed an offence by violating the Export and Import policy.

4. Aggrieved with the said order the petitioners have come up in petition u/s 482 of the Code of Criminal Procedure for quashing the proceedings on the ground that in fact the Custom Authorities had cleared the import and had charged the custom fee etc. and, therefore, the summoning order as such could not be sustained and the proceedings taken in pursuance of the complaint is liable to be quashed on several grounds mentioned in the petition.

5. The learned counsel for the petitioners has relied upon a Division Bench authority of this Court in Oswal Wollen Mills Ltd. and Another Vs. Union of India and Others, . The cited case is almost on all fours with the case in hand, wherein in nut shell it was laid down as under :-

"No one can be made to suffer because of the fault of the Court, Tribunal or the other statutory authority. In the present case although the beef tallow is not an OGL item and as such could not be imported against REP licence still the Collector of Customs cleared the goods against those licenses. If the Collector had not cleared the goods, the petitioners would have re-exported them and saved themselves of this predicament."

6. Respondent Nos. 2, 4 and 7 impleaded as accused in the original complaint had the import licences with the following details :-

(i) Import Licence No. P/W/2942510 dt. 4.9.81 issued to M/s Industrial Cables (India) Ltd. was endorsed with contract No. 80/5 dt. 27.10.80 and 81/6 dt. 27.5.81.

(ii) Import Licence No. P/W/2942525 dt. 17.9.81 issued,to M/s Industrial Cables (India) Ltd. was endorsed with contract No. 80/5 dt. 27.10.80.

(ii) Import Licence No. P/W/0338793 dt. 22.3.82 issued to M/s Adya Industries, Ludhiana was endorsed with contract No. 32/02/10531 Addendum No. 1 dt. 22.7.80 and 23/02/10531 Addendum No. 3 dt. 29.11.80.

(iv) Import Licence No. P/L/0338885 dt. 26.3.82 was endorsed with contract No. 32/02/10531 Addendum No. 3 dt. 29.11.80 and 32/02/22064 dt. 18.3.81.

7. The import of beef tallow was allowed under the OGL. Later on the import of beef tallow was slopped because of some problems in the country.

8. So, despite the fact that this import was banned and OGL and against REP licences issued after 15.6.1981 the Division Bench of this Court was of the view

 

that by charge of levy of custom duty and re-export of articles, the effect of import totally goes off. At the same time there was confusion with the importer that this article could be imported under the licence granted.

9. So when there is no dispute that the custom authority had cleared the goods after charging the penalty etc. to the tune of Rs. 7,74,417.91 and the beef tallow had been re-exported on 19.1.1985, the total cause of action vanishes. Besides this the private criminal complaint by the Deputy Chief Controller of Imports and Exports was brought after delay of three years which is unexplained. A complaint brought in such a matter after three years reflects an inordinate delay and is motivated to cause harassment to the petitioner. Taking into consideration the fact that a period of 17 years had lapsed since the complaint is pending and the fact that the same had been filed after delay of three years when the article had already been re- exported, I am of the view that the delay along with other reasons would be sufficient to quash the proceedings. Hence, both the Crl. Misc. are allowed and the proceedings against the petitioners are quashed.

10. Petition allowed.

 