

**(1983) 12 BOM CK 0013**

**In the Bombay High Court**

**Case No : Misc. Petition No. 2217 of 1979**

Gujarat State Export Corporation Ltd. and another

APPELLANT

Vs

Union of India and another

RESPONDENT

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**Date of Decision :** 06-12-1983

**Acts Referred:**

Customs Act, 1962 — Section 111

**Citation :** (1984) 17 ELT 50

**Hon'ble Judges :** M.L. Pendse, J

**Bench :** Single Bench

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## **Judgement**

1. The petitioner No. 1 - Gujarat State Export Corporation Limited - is a Government Undertaking incorporated as a Company under the Companies Act, while the petitioner No. 2 is a shareholder and Director of the petitioner No. 1

2. The petitioner No. 1 carries on business as an export house and as an eligible house were granted eight import licences during the period from January 29, 1973 to October 4, 1973. The petitioner No. 1 imported 64 Boxes (pallets) containing synthetic resin (polyester chips) valued at Rs. 6,21,010.00 and the goods reached Bombay Port on May 31, 1974. The eight import licences were transferred to the petitioners as provided under Import Policy for the year 1973-74. The petitioners submitted the Bill of Entry and other shipping documents to the Bombay Customs on May 31, 1974 and took steps for early release of the consignments. On August 17, 1975, i.e. almost after one year and two months of the submission of the Bill of Entry, a Show Cause Notice was served on the petitioners by the Assistant Collector of Customs. The show cause notice dated August 17, 1975, inter alia, alleged that the import licences produced by the petitioners for the clearance of the goods were not valid to cover the goods under reference and discloses an offence u/s 111(d) of the Customs Act, 1962 and the Import (Control) Order of 1955. The petitioners sent their reply on September 22, 1975 and were given a personal hearing on October 31, 1975 and at the hearing, the petitioners stated that the licences were valid to

cover the goods imported.

3. The Collector of Customs, Bombay, by order dated November 7, 1975 held that the goods imported are of textile grade and are meant for spinning. It was further held that the goods have been licensed to be imported against the Export Product Group A-136.24 which covers Filter and Filter elements against the export of which the import licence has been claimed and obtained. The Assistant Collector held that the synthetic resin imported by the petitioners is of no use in the manufacture of Filter and Filter elements. The Assistant Collector held that since the imported goods do not find use in the end product i.e. Filter and Filter elements, the licences produced are not valid to cover the goods. The Assistant Collector felt that the imported material must have correlation with the export product group shown in the licence and that is, in other words, unless the imported material is made use in the manufacture of Filter and Filter elements, the import is not permissible. On the strength of this finding, the Collector held that the import was in contravention of Section 111(d) of the Customs Act and is liable to be confiscated. The Collector granted an option to the petitioners to redeem the goods on payment of fine of Rs. 3,10,000 only in lieu of confiscation.

4. The petitioners preferred an appeal before the Central Board of Excise and Customs but the appeal ended in dismissal by an order dated July 31, 1976. The Central Board held that from the perusal of the list in Section II of the Import Policy Group of the year 1974-75, it appears that the imported items do bear a link with the product which is exported and the basic idea of replenishment would be lost if the link is broken. It was further held that Paragraph 13 of Part "g" of Section I regarding utilisation of goods imported by eligible Export House has to be construed in the light of general policy and if it is read in that way, then the use of the words "export production" cannot be export production of any category off the goods. According to the Board, it is capable of only one meaning that the goods can be disposed of only to those actual users who are engaged in export production of those products which are covered by the eligibility certificate of the Export House. The Board took notice of the fact that the Bombay Customs House has been releasing some goods against similar licences in the past, but felt that the past practice would not prevent the Department from rectifying the mistake and would not constitute an estoppel. The petitioners carried revision before the Government, Ministry of Finance, Department of Revenue, but that also ended in dismissal by an order dated April 19, 1979. The revisional authority felt that once an export house is granted an eligibility certificate for a particular Product Group, they would acquire the flexibility of importing only Column 4 items permissible against the export products falling under the said Products Group but by this, they would automatically be bound by the restriction which invariably applies in the form of correlation between the Column 4 items and the corresponding export product in Column 2. It was further held that the Import by Export House against actual users (RE) licences transferred to them should also be only within the framework of the the restrictions/conditions as indicated in Section II of the Policy Book. It was further held that though the licences

transferred in favour of the petitioners do not impose a specific condition that the imported items must be used for the manufacture of Filter and Filter elements for the purpose of export, such restriction or condition can be reasonably deduced from the relevant provisions of the I. T. C. Policy Book. The Board further held that though it is true that the import of synthetic resin the the year 1973-74 was not hampered by the restriction, the public notices dated July 20, 1974; September 18, 1974 and October 8, 1975 issued by the Government would lead to the conclusion that the import of synthetic resin under the licences was not valid as the imported synthetic resin was in the nature of textile goods. The Board also felt that in view of the decision of this Court in the case of M/s. Nirlon Synthetic Fibres and Chemicals, it can be held that the synthetic resin and polyester chips in the form of granules do not fall within the expression "synthetic resin". The Board accepted the claim of the petitioners that there had been a practice of the Bombay Customs House to release such goods against similar licences in the past but held that such practice can be taken into consideration only for moderating the quantum of fine and accordingly, the fine was reduced to only Rs. 1,55,000. The order of the revisional authority is under challenge.

5. Shri Mehta, learned counsel appearing in support of the petition, raised several contentions to challenge the validity of the order passed by the authorities below. It was urged that the import licences transferred in favour of the petitioners put no condition that the imported items of synthetic resin must be used for the manufacture of Filter and Filter elements. The learned counsel submitted that neither in the licences, nor in the relevant import policy, it was provided that there should be correlation between the item exported and the item provided that there should be correlation between the item exported and the item imported and it was wrong on the part of the authorities to claim that the import is valid provided that the imported item is used for the manufacture of item which was exported and in respect of which the import licence was granted. It was further urged that the authorities below were in error in relying upon the public notices dated July 20, 1974; September 18, 1974 and October 8, 1975 to hold that the import of synthetic resin on May 31, 1974 was invalid. The submission was that the authorities gave retrospective effect to the public notices and that is not permissible in view of the decision of the Supreme Court in the case of Bharat Barrel and Drum Mfg. Co. (P) Ltd. Vs. The Collector of Customs, Bombay and Another, .

6. Shri Mehta further urged that the revisional authority made out a new case for the Department while holding that in accordance with the judgment of this Court in the case of M/s. Nirlon Synthetic Fibres and Chemicals, the goods imported by the petitioners were not synthetic resin. It was urged that the Customs House on test found that the goods imported were synthetic resin of textile grade and the Collector and the Central Board proceeded on that footing and it was not permissible to make out a new case for the Department for the first time in the revision. It was also urged that the decision of this Court in M/s. Nirlon Synthetic

Fibres and Chemical"s case has no application whatsoever to the facts of the present case and the question whether the goods imported were synthetic resin or not cannot be decided with reference to the decision in some other case. Finally, the learned counsel urged that the three authorities below accepted that it is the consistent practice of the Bombay Customs House to release such goods against similar licences in the past and in view of that clear-cut position, it was wrong to exercise the power to confiscate the imported goods.

7. In my judgment, though there is considerable merit in each of the submissions, urged by the learned counsel, it is not really necessary to examine each of the submission in greater detail because the petitioner is entitled to succeed on the last ground itself. I am examining all the submissions in great depth because the import has been made by the petitioners, who are Gujarat Government Undertaking on May 31, 1974 and the question as to whether the import policy for the year 1973-74 permits reading of condition that the import policy for the year 1973-74 permits reading of condition that the imported items must be used for the manufacture need not detain me as the policy for the subsequent years does provide for such condition, with the result that the issue in the petition would not affect the subsequent import. In my judgment, as the three authorities below have consistently held that it was a long standing practice of the Customs House to release similar goods against similar licences, the exercise of the powers of confiscation u/s 111(d) of the Customs Act was entirely uncalled for in the present case. The petitioners relied upon the long standing practice of the Bombay Customs House and effected the import and as the Customs House itself was in doubt as to whether the import was valid or not and was releasing the import on previous occasions; including the import of the identical items of the petitioners, it cannot be said that the import was in contravention of the provisions of Section 111(d) of the Customs Act. Section 111(d) of the Customs Act enables confiscation provided the import is contrary to any prohibition imposed by or under this Act or any other law for the time being in force. As two views were possible about the validity of the import and the customs house was consistently taking the view over several years that the import was valid, in my judgment, this was not a fit case to take proceedings for confiscation and the imposition of fine in lieu of confiscation was wholly unnecessary. In my judgment, this ground itself is sufficient to dispose of the petition.

8. Accordingly, the rule is made absolute in terms of prayer (a) of the petition. In the circumstances of the case, there will be no order as to costs.