(2002) 02 BOM CK 0067

In the Bombay High Court

Case No : Writ Petition No. 3189 of 1987

Hindsons Private Limited — APPELLANT

Vs

Union of India (UOI) — RESPONDENT

Date of Decision : 21-02-2002

Acts Referred:
Customs Act, 1962 — Section 111

Citation : (2002) 144 ELT 274

Hon'ble Judges : V.C. Daga, J;J.P. Devadhar, J

Bench : Division Bench

Advocate : J.J. Bhatt, S.A. Diwan, C.S. Kapadia and M. Salian, instructed by Gagrat and Co, for the Appellant; R. Asokan and M.I. Sethna, instructed by H.D. Rathod, for the Respondent

Final Decision : Allowed

Judgement

J.P. Devadhar, J.—By this petition, the petitioners have inter alia sought a writ of certiorari for quashing the order of Collector of Customs dated 6-3-1987, vide Ex.Y to the petition, wherein the components of "Combine Harvesters" imported by the petitioners in the year 1983 have been ordered to be confiscated u/s 111(d) of the Customs Act, 1962. Since the said goods were released as per the orders of this Court in an earlier proceeding on the petitioners furnishing I.T.C. Bond/Bank guarantee for Rs. 37 lakhs by the aforesaid order dated 6-3-1987, the Collector of Customs has directed that the amount of Rs. 37 lakh be recovered from the petitioners as penalty in terms of the Bond/Bank guarantee furnished by the petitioners. The petitioners have challenged the validity of the said order of the Collector of Customs in this petition.

FACTS

2. The facts relevant for the present petition are as follows :

On 5-10-1964 the petitioner No. 1 obtained a registration certificate as a Small Scale Industry from the Directorate of Industries, Government of Punjab. On

23-4-1983 the petitioners sought an endorsement on its Registration Certificate to manufacture "Combine Harvesters". In the covering letter dated 23-4-1983 while forwarding the above application it was specifically stated that the petitioners propose to import 35% of components in the first year of commencement of production in order to implement the project speedily and ensure quality as well as upgraded technology but in accordance with the prevailing import policy. On 20-5-1983 the registration certificate issued to the petitioners was duly endorsed to permit manufacture of "Combine Harvesters".

3. Thereupon the petitioners imported components of "Combine Harvesters" sometime in November, 1983, the clearance of which was objected to by the respondents. On 26-12-1983 a show cause notice was issued by the respondents in respect of the said consignment imported by the petitioners. Challenging the said show cause notice the petitioners filed Writ Petition No. 3062 of 1983 in this Court where interim relief was granted in favour of the petitioners thereby granting clearance of the goods on the petitioners furnishing bond and bank guarantee for Rs. 37 lakh. As per the order of this Court, the goods have been released on the petitioners furnishing Bond/Bank guarantee. Thereafter, the above show cause notice was adjudicated and by order dated 6-3-1987 the Collector of Customs sought to confiscate the goods imported by the petitioners u/s 111(d) of the Customs Act. Since the goods were already released as per the orders of this Court, it was ordered that the amount of Rs. 37 lakh be realised as penalty by encashing the Bond/Bank guarantee furnished by the petitioners. The petitioners sought to challenge the said order by amending the Writ Petition No. 3062 of 1983. This Court, however, directed the petitioners to file a fresh petition and hence this petition is filed by the petitioners.

ARGUMENTS

4. The learned Counsel for the petitioners, contended before us that importation of the goods was in accordance with the prevailing import policy and when the licensing authorities have not questioned the validity of the importation of the goods, it was not open to the Customs Authorities to allege that the import of goods is in violation of the import policy. It was submitted that once the Registration Certificate was amended to permit manufacture of "Combine Harvesters" and it was specifically stated in the application that in the first year the petitioners would import 35% of the components of "Combine Harvesters" it could not be held that importation is contrary to law. It was submitted that under the relevant import policy, the petitioners as actual-users could import ''components'' required in the manufacture of "Combine Harvesters".

5. On the other hand, the Counsel for the respondents contended that the permission to manufacture "Combine Harvesters" was provisional and hence importation on the basis of provisional certificate would not entitle the petitioners to import components of "Combine Harvesters". Relying upon the decision of the Apex Court in the case of Sheshank Sea Foods Pvt. Ltd., Karnataka Vs. Union of India (UOI) and Others, it was contended that the Customs Authorities had

jurisdiction to investigate if the importation is in violation of the import policy.

FINDINGS

6. It is not in dispute that the Registration Certificate granted to the petitioners carried an endorsement permitting manufacture of "Combine Harvesters". It is not in dispute that the items imported are components used in the manufacture of "Combine Harvesters". The only ground on which the importation is held to be bad is that the endorsement on Small Scale Industries Certificate was provisional and it was valid up to 12-4-1985. In our opinion, granting provisional permission to manufacture "Combine Harvesters" would not make any difference in importing components or "Combine Harvesters". Item No. 1 of Appendix 10 of the Import Policy April, 1983 - March 1984 (AM 84) specifically permits importation of components by the actual user in the manufacture of an item permitted to be manufactured by him. All that the import policy requires in Para 21(a) is that at the time of clearance the actual user must furnish declaration giving particulars of industrial licence or registration. In this case, it is not disputed that the items imported are components for manufacture of "Combine Harvesters" and that the Registration Certificate produced by the petitioners cover the item "Combine Harvesters". Merely because the Certificate was provisional or that the particulars of the components were not set out in the Registration Certificate will not render the importation illegal. Moreover, it is also not in dispute that the Registration Certificate for manufacture of "Combine Harvesters" has not been cancelled at any time and even the Import Control Authorities have not taken any objection to the importation of the goods by the petitioners. The decision of the Apex Court in Sheshank Sea Foods Pvt. Ltd. (supra) is distinguishable on facts and has no relevance in the present case. In that case, the issue was pertaining to violation of condition of exemption notification issued under the Customs Act. In that context, the Apex Court held that even if importation was under a valid licence, if there is violation of the exemption notification issued under the Customs Act then the Authorities under the Customs Act are entitled to take action. Therefore, the above decision of the Apex Court does not support the contention of the respondents. In the present case, when the components of Combine Harvester could be imported as an O.G.L. item covered under Appendix 10 of AM 84 and the petitioners have produced requisite certificate regarding right to manufacture of Combine Harvester, the petitioners are entitled to seek clearance of the same. Since the importation is as per the import policy and there is no other violation of the provisions of Customs Act, the impugned order cannot be sustained. In this view of the matter, the importation is held to be valid and the impugned order of the Collector of Customs is liable to be quashed and set aside.

ORDER

7. Accordingly the petition succeeds. Rule is made absolute in terms of prayer clause (a) of the petition. The respondents are directed to cancel and return the Bond/Bank guarantee furnished by the petitioners within four weeks from today.

However, in the facts and circumstances of the case, there will be no order as to costs.