
(1967) 04 DEL CK 0009
In the Delhi High Court
Case No : Civil Writ No. 191-D of 1963

H.S. Mehra

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 28-04-1967

Acts Referred:

Citation : AIR 1968 Delhi 142

Hon'ble Judges : S.K. Kapur, J

Bench : Single Bench

Advocate : S.S. Chandha, for the Appellant; Parkash Narain, for the Respondent

Judgement

(1) The petitioner was granted a license dated 14-12-1959. for import of "textile fabrics or pieces thereof made of "silk" only" from soft currency licensing area. It was stated in the license that "this license is issued subject to the condition that the goods will be utilised only for consumption as materials or accessories in the license holders factory and that no portion thereof will be sold to or permitted to be utilised by any other party or be pledged with any financier". The license was made subject to certain conditions and the three relevant conditions were-

(1) "The licensee shall produce a bond duly guaranteed by a scheduled bank for 100 per cent, of the C. I. F. value of imports undertaking to export the finished goods viz: "textile fabrics or pieces thereof made of silk" after they have been embroidered in India with silver thread to the extent of Rs. 6,556

(2) The licensee shall export within 6 months of the import of the material covered by this license Rs. 6556/- worth of finished goods as mentioned in 1 above

(3) The licensee shall export the same imported material duly embroidered in India with silver thread and the entire yardage 1296 yards imported against this license should be exported".

(2) The petitioner re-exported the goods after they had been made into table

covers and embroidered in India and by the shipping bill claimed drawback of duty u/s 43B of the Sea Customs Act, 1878. The petitioner claims that the Customs authorities kept two samples of the silk imported and also of the table covers made of that silk at the time of its export and were satisfied that the petitioner had re-exported the entire imported silk represented by the finished goods and, Therefore, allowed the export. The petitioner had also been required to execute a bond in favor of the Government of the value of 100 per cent the imported cost duly guaranteed by a schedule bank guarantee the re-export of the finished goods including the entire imported material within six months of the importation. The said bond was duly furnished by the petitioner and after the re-export the Assistant Controller (Export Promotion Cell) cancelled the same by letter dated 23rd November 1961. In the said letter it was inter alia stated-

"I write to confirm that the bond executed by you on 6-7-1960 has been cancelled on the basis of your export of 1277 yards of textile fabrics (imported under license No. E 839248/59 dated 14-12-1959) embroidered in India valued Rs. 6,385 leaving a balance of 19 yards valued Rs. 171" This shortage of 19 yards represented the samples taken by the Customs authorities. The customs authorities allowed drawback u/s 43B of the said Act but by letter dated 9th November 1961, the petitioner requested the Assistant Collector (Drawbacks) Madras to review the claim and entertain the same u/s 42 of the said Act By order dated 18th November 1961, the Assistant Collector of Customs refused to consider the claim u/s 42 and observed:--

"The claim filed by you for drawback of duty on the above mentioned goods at the time of export were only u/s 43B, Sea Customs Act. As such they were finalised at the rates of drawback prescribed under that section of the Sea Customs Act. The amounts of drawback paid to you are hence in order." 4. The petitioner filed an appeal before the Collector of Customs which was dismissed by order dated 12th January, 1962. The Collector rejected the appeal on two grounds:-

1. "The claim u/s 42 of the Sea Customs Act was not made and established prior to shipment;" and

2. "the goods had undergone process of manufacture after import and hence are not identifiable."

(3) Mr. Chadha, the learned counsel for the petitioner argued that a mere mistake in the statement of a particular provision of the Act, namely. Section 43B instead of Section 42 should not have disentitled the petitioner to the relief and that on the admitted facts of the case the petitioner was entitled to drawback u/s 42. It is necessary in the circumstances to read the relevant provisions of the said Act Section 42 reads:-

"When any goods capable of being easily identified which have been imported by sea into any customs-port from any foreign port, and upon which duties of customs have been paid on importation are re-exported by sea from such

customs-port to any foreign port, or as provisions or stores for use on board a ship proceeding to a foreign port seven-eighth or in the case of silver bullion the whole of such duties shall, except as otherwise hereinafter provided be repaid as drawback:

....."

One of the conditions prescribed in the proviso to Section 42 is that:-

"in every such case the goods be identified to the satisfaction of the Customs Collector at such customs-port " Sec 43B dealt with the drawback on goods taken into use between importation and re-exportation and sub-section (1) of Section 43B under which claim was made. Provides-

"(1) Where it appears to the Central Government that, in the case of goods of any class or description manufactured in, and exported from India or shipped as provisions or stores for use on board a ship proceeding to a foreign port, a drawback should be allowed of duties of custom chargeable under this Act in respect of any material of a class or description used in the manufacture of such goods, the Central Government may, by notification in the Official Gazette direct that a drawback shall be allowed in respect of such goods in accordance with and subject to, the provisions of this section and any rules made there under."- The Explanation to Section 43B has an important bearing and is in the following words:-

"Explanation:-- In this section the expression "manufacture" (with its grammatical variations and cognate expressions) includes the processes of blending any goods or making of other alterations therein."

(4) I have set out the Explanation because of the contention of Mr. Parkash Narain, the learned counsel for the respondents that embroidery work done on the silk amounted, in any case, to "marking of other alterations therein." Mr. Chadha, the learned counsel for the petitioner, sought to justify; his claim u/s 42 of the said Act on two grounds:-

(1) The petitioner re-exported the same goods as were imported by him and the mere fact that they were cut into pieces and embroidered did not render the exported goods different from those imported; and

(2) even if they were different they were "capable of being easily identified" within the meaning of Section 42.

In other words, the contention of Mr. Chadha was that irrespective of the fact that the goods were cut into pieces and embroidered the petitioner would be entitled to drawback u/s 42 because the pieces were identifiable. The argument of Mr. Parkash Narain, the learned counsel for the respondents, on the other hand, was that Section 43B was rightly applied as the silk imported was subjected to manufacturing process and, Therefore, the silk imported constituted "any material of a class or description used in the manufacture of such goods"

within the meaning of Section 43B of the said Act Mr. Parkash Narain also relied considerably on the Explanation to Section 43B in support of his plea that since making of alternations constituted manufacture cutting and embroidering of silk would be manufacture. So far as Section 42 is concerned Mr. Chadha is not, in my opinion, right in saying that merely because the goods were capable of identification even after being cut into pieces the matter would fall within S. 42. The words "capable of being easily identified" in S. 42 refer to the nature of goods. In other words these words indicate that the concession of drawback is available only to such class of goods as are capable of being easily identified. The true construction of Section 42 appears to be that-

- (1) the concession extends only to such goods which are capable of being identified; and
- (2) with respect to such goods a party is entitled to drawback if those very goods are re-exported.

Section 49, which confers powers on the Central Government to "declare what goods shall, for the purpose of this chapter, be deemed to be capable of being easily identified", lends further support to the view that I am taking. Section 43B, on the other hand, appears to apply to materials of any class or description which are imported and used in the manufacture of such goods as are re-exported. The question that calls for decision, Therefore, is: was the silk imported re-exported as such or was it only a material used in the manufacture of the goods exported? In the shipping bill the goods exported are described as "silk table covers embroidered with silver thread" Mr. Chadha said that Section 43B applied only where the materials are subjected to such process of manufacture as results in loss of identify of the materials. There appears to be no force in this contention. As I have already said if the goods imported are re-exported then Section 42 would apply but if the goods are used in the manufacture of the goods exported then Section 43B would come into play. Explanation to Section 43B is also destructive of the argument of Mr. Chadha. For deciding whether the materials have been used in the manufacture of the goods exported, I think the word "manufacture" has to be given its ordinary meaning. In *Union of India (UOI) Vs. Delhi Cloth and General Mills*, , their Lordships of the Supreme Court quoted with approval the following passage from Permanent Edition of Words and Phrases. Volume 26:--

" "Manufacture" implies a change, but every change is not manufacture and yet every change of an article is the result of treatment, labour and manipulation. But something more is necessary and there must be transformation; a new and different article must emerge having a distinctive name, character or use." Again, in *Bouvier's Law Dictionary*, Volume 2, page 2086, it is stated : --

"Manufacture. To make or fabricate raw materials by hand, art, or machinery, and work into forms convenient for use; and, when used as a noun, anything made from raw materials by hand, or by machinery, or by art. *People v. Wemble*,

61 Hun 53, 15 N. Y. Supp. 711.

Making fish lines, ropes, etc., from raw material is a manufacture; City of New Orleans v. Arthurs, 36 La. Ann. 98; as is the making of cordage, rope, and twine; Waterbury v. Cordage Co., 42 La. Ann. 723, 7 South. 783. Cutting ice and storing it in a building is not :Hittinger v. Inhabitants of Westford 135 Mass 258.

.....

Manufactured Articles. Kindling wood produced by machinery from green slabs of wood, kiln dried and compressed into a bundle, is manufactured."

Some illustrations are given in Bouvier's Law Dictionary as illustrations of processes not amounting to manufacture in the following words:--

"Wool is not a manufactured article under the revised statutes; Frazee v. Moffitt 20 Blatch 267, 18 Fed. 584; nor are wool tops prepared for spinning and broken up into small fragments; U. S. v. Patton, 46 Fed. 461; nor copper plates turned up and raised at the edges by labour, to fit them for subsequent use in the manufacture of copper vessels; U. S. v. Ptots, 5 Cra. U. S. 284, 3 L. Ed 102; nor marble cut into blocks for transportation." The Law Lexicon of British India by P/ Ramanatha Iyer, page 785, also gives various meanings of the word "manufacture" but the most relevant are the following:--

"To constitute a manufacture, within the customs duty acts, there must be a transformation. Mere labour bestowed on an article, even of the labour is applied through machinery, will not make it a manufacture, unless it has progressed so far that a transformation ensues, and the article becomes commercially known as another and different article from that as which it began its existence.

Every alternation in an article does not confer on it a new character as a manufacture. To constitute a new and different article and a manufactured article, it must be so changed as to have a positive and specific use in its new state."

No doubt, the definition of the term "manufacture" as given by the lexicographers does not necessarily afford a true test in laws as to what should or should not ,while dealing with a given statute, be construed as amounting to manufacture but that definition does provide a guide as to what meaning, in the absence of any indication to the contrary in the statute, it should carry. As a matter of fact, the object of the Legislature leans towards extending the definition of manufacture rather than Explanation. It is not denied that at the time of export the claim made was u/s 43B. The Customs authorities were, Therefore, not called upon at that stage to look at the goods to find out whether there had been such a transformation as would constitute the new article a different one having a positive and specific use in it new state. If the argument of Mr. Chadha as to the identifiably of the goods were to be accepted it would mean that even if the silk imported had been cut and stitched into clothes,the petitioner would still have been entitled to drawback u/s 42. That does not

appear to be the intention of the Legislature and in such a situation it would not be possible to say that the goods exported were the same as those imported. Again, the petitioner himself described the goods as "table covers". Such table were embroidered. The resulting product would, Therefore, be a new and different article having a distinctive name, character or use. I am unable, Therefore, to agree with the petitioner that the silk imported had not been subjected to a process of manufacture. Mr., Chadha strongly relied on the conditions of the license and said that the petitioner was there under required to re-export the textile fabrics or pieces thereof after they had been embroidered. From this he suggested that the only conclusion possible was that the same goods had been re-exported. This argument suffers from two-fold fallacies:--

(1) The condition of license may be satisfied if the silk imported had been transformed into a product having a distinctive name in the commercial market and yet that transformation may amount to manufacture within the meaning of Section 43B entitling the petitioner to a lesser drawback and

(2) the license was for import of textile fabrics or pieces thereof and possibly the first condition had reference to that,

(5) In view of this discussion this petitioner fails and is dismissed with no order as to costs.