
(1981) 08 BOM CK 0016

In the Bombay High Court

Case No : Miscellaneous Petition No. 1572 of 1977

Jagmohandas Kuberdas Katakia

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 18-08-1981

Acts Referred:

Constitution of India, 1950 — Article 226
Major Port Trusts Act, 1963 — Section 48, 49, 50, 51

Citation : (1982) 10 ELT 399

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

Bench : Single Bench

Judgement

1. The petitioner is an Importer and runs a Woollen Handloom Industry using shoddy wool and woollen rags as raw material for spinning woollen yarn.

2. The petitioner runs his business in the name of "Vishnu Cottage Industry" situated at Kalol in Panchmahal District of Gujarat State. Prior to the year 1956, the raw material required for the weaving sector of the shoddy sector of the woollen industry was met by the import of shoddy woollen yarn, largely from Italy. The import of raw material was regulated under the provisions of the Imports and Exports (Control) Act, 1947 and the Import Control Order. The import of the woollen rags was exempted from payment of customs duty, whereas the import of second-hand clothes was not exempted and 100% duty was leviable thereon. The importers of woollen rags were faced with his disadvantage by reasons of the fact that in the foreign countries, the cost of stripping or mutilation of second-hand garments into rags was very heavy. The foreign exporters were not inclined to mutilate or strip the old garments. The cost of stripping or mutilation in the foreign country was a heavy burden upon the importers. The importers thereupon made representation to the concerned authorities and sought permission to permit the import of woollen garments in unmotivated and unscripted condition and to get them stripped or mutilated in India so as to make them wholly unfit for any other use other than as raw material for the purpose of shoddy woollen industry.

3. Accordingly, on November 29, 1961, the Additional Collector of Customs, Bombay, issued a public notice evolving the procedure with regard to the exemption granted by the Government to the unscripted woollen rags imported by the shoddy woollen units. The public notice, inter alia, provided that the goods before the clearance from the Docks should be cut to small pieces so as to render them unfit for any use other than rags. In view of the public notice, unscripted woollen rags were treated as falling within the ambit of Item 49(4) of the Customs Tariff and were exempted from the payment of Customs Duty.

4. From the Licensing year April 1967/March 1968, the import of the shoddy raw materials was canalised through the State Trading Corporation (hereinafter referred to as the "S.T.C."). The S.T.C. invites global tenders from foreign suppliers for the import of old or used garments. The S.T.C. thereafter calls upon the Importers to select the requirements out of the offered list of foreign suppliers and then the S.T.C. would book the orders for old used garments with the said suppliers. The Importers would establish a local Letter of Credit in favour of the S.T.C. as per the value of allocation made by the S.T.C. After such Letter of Credit was established in favour of the S.T.C., the S.T.C. would open a Letter of Credit in favour of the foreign suppliers. The placing of the orders and the other material aspects of the importation are handled and controlled by the S.T.C. According to the orders placed by the S.T.C., the foreign shippers would send to India the old woollen garments and on arrival, the old garments were mutilated or stripped under the supervision of the S.T.C. After the Letter of Credit is opened by the S.T.C. in favour of the foreign shippers, the S.T.C. hands over the shipping documents to the importers. On arrival of the ship, the importer lodges a bill of entry with the Customs authority and after the verification by the Customs, the import of woollen rags or the garments are allowed to be mutilated under the supervision of the S.T.C. and thereafter permitted to be cleared out of the Docks by the Customs authority.

5. The Chief Controller of Imports and Exports issued a public notice dated August 8, 1974 regarding the woollen rags and it reads as under :

"GOVERNMENT OF INDIA MINISTRY OF COMMERCE IMPORT TRADE CONTROL
PUBLIC NOTICE NO. 115-ITC(PN)/74 New Delhi, dated the 8-8-1974

Subject : Import of woollen rags - Definition of woollen Rags.

Attention is invited to the Ministry of Commerce Public Notice No. 154-ITC(PN)/73, dated the 17th September, 1973 on the above subject.

2. Definition of woollen rags as contained in Para 2 of the Public Notice mentioned above has been amended to read as follows :-

"WOOLLEN RAGS

(a) NEW - Waste Woollen cloth whether woven or knitted which is left after a garment had been cut out including genuine tailor cuttings, piece ends, discarded pattern bunches and sample bits.

(b) OLD - Rags of woollen textile fabrics (including knitted and crocheted fabrics), which are required for manufacture of shoddy yarn and may consist of articles of furnishing or clothing or other clothing so worn out, soiled or torn as to be beyond cleaning or repair. In case serviceable garments have been imported they will have to be mutilated before release by Customs authorities."

3. The above definition will also apply to consignments that had arrived prior to the date of issue of this Public Notice but are yet to be cleared.

Sd/- *** (B.D. KUMAR) CHIEF CONTROLLER OF IMPORTS AND EXPORTS."

In pursuance of this Scheme, the petitioner imported 43 bales of woollen garments unmotivated or not properly mutilated rags. The steamer arrived in the Bombay Port on August 13, 1977 and the goods were discharged from August 13, 1977. The petitioner filed the Bill of Entry on August 1, 1977 and the last free date was August 24, 1977. As per the rules framed by the Port Trust Authorities, the importer is liable to pay demurrage charges after the last free date. The goods were inspected by the Customs authorities on the first occasion on August 20, 1977 and on the second occasion on August 24, 1977. The petitioner paid the Customs duty on August 30, 1977. On September 3, 1977, the Deputy Manager, Indira Docks, wrote, the Shed Superintendent to allow mutilation under S.T.C.'s supervision. The mutilation commenced on September 14, 1977 and completed on September 17, 1977, September 15 and 16 being holidays. In other words, the mutilation was over in two days. In spite of that fact, the petitioner removed the rags only on September 27, 1977. The Port Trust authorities had recovered the demurrage charges of Rs. 10,810.75 for the period from August 24, 1977 to September 26, 1977. The petitioner thereafter by letter dated September 24, 1977 called upon the Assistant Collector of Customs to issue detention certificate in respect of consignment of 43 bales. The detention certificate was sought because on grant of the same, the petitioner would not be liable to pay any demurrage charges to the Port Trust authorities. The Assistant Collector of Customs by his letter dated September 28, 1977 declined to issue the detention certificate on the ground that the delay in removal of woollen rags is not attributable to the Customs authorities. The petitioner has thereafter approached this Court on November 4, 1977 by filing this petition under Article 226 of the Constitution of India.

6. The petitioner has sought several reliefs in this petition. The petitioner claims that the respondents are bound to issue detention certificate and the petitioner is not liable to pay any demurrage charges. The petitioner also claims that the respondents are not entitled to recover any customs duty and are liable to refund to the petitioner an amount of Rs. 8,186/- for the pilferage of certain goods out of the imported stock of rags. It is obvious that the petitioner cannot agitate in this petition his claim about exemption from Customs duty or about the pilferage of goods. The petitioner will have to adopt proceedings for refund of the customs duty before the proper authorities and would have to institute proceedings for recovering the amount, which, according to him, was the compensation for loss

suffered by him due to the pilferage of goods. Realising this position, Shri Malik, the learned counsel appearing in support of the petition, very rightly did not press for those reliefs but restricted his submission only to the question of grant of detention certificate.

7. The learned counsel advanced tow-fold submission claiming that the petitioner was not liable to pay the demurrage charges and even otherwise the rate claimed by the Port Trust Authorities is not proper. It is not in dispute that in case the detention certificate is issued in favour of the petitioner, the petitioner is not liable to pay the demurrage charges. The respondents Nos. 1 and 2 have filed the return dated June 30, 1981 sworn by M.P. Gaonkar, the Assistant Collector of Customs, Woollen Rags Cell, New Customs House, Bombay and it is claimed that the petitioner had not done mutilation of the serviceable garments with utmost swiftness and the goods were detained with the Port Trust authorities for no fault of the Customs authorities and as such the petitioner and the petitioner alone is who liable to pay the demurrage charges.

8. The first question that requires answer is whether the petitioner is liable to pay the demurrage charges from August 24, 1977 to September 26, 1977. As stated hereinabove, the last free date was August 24, 1977 and if the petitioner had cleared the goods prior to that date, then there was no liability to pay any demurrage charges. The inspection of the imported goods by the Customs authorities was over on August 24, 1977 itself but the petitioner did not pay the customs duty till August 30, 1977. The goods were released subject to mutilation on payment of customs duty. It was the petitioner who paid the customs duty late and the goods were required to be kept in the sheds of the Port Trust authorities for the laches on the part of the petitioner. It is also equally clear that although the goods were released on August 30, 1977, the petitioner did not apply to the S.T.C. to proceed with the mutilation under its supervision till September 9, 1977. The claim of the petitioner that the mutilation was permitted by the Deputy Manager, Indira Docks, only on September 3, 1977 is without any basis. The mutilation was over by September 17, 1977 and inspite of that the petitioner did not remove the goods till September 27, 1977. The facts unmistakably indicate that the petitioner did not act very swiftly in the removal of the goods and it was because of the petitioner's negligence that the goods remained with the Port Trust authorities during the period from August 24, 1977 to September 26, 1977. In my judgment, the claim of the petitioner that he is not liable to pay demurrage charges because the goods could not be cleared earlier is without any basis. Shri Shah, the learned counsel appearing on behalf of the Customs authorities, very rightly claimed that the petitioner wanted relief from payment of customs duty and, therefore, through the old garments in mutilated condition were imported, they required further mutilation before exemption of customs duty. The petitioner wanted the advantage of the exemption notification and, therefore, it was the petitioner and petitioner alone who is liable to pay the demurrage charges if the goods could not be cleared swiftly. Shri Malik submitted that the demurrage charges should be borne by the

Customs authorities because it was the failure of the Customs authorities which led to the detention of the goods till September 27, 1977. The facts clearly indicate that it was the petitioner who was responsible for non-clearance of the goods at an early date and the blame cannot be led at the door of the Customs authorities. In any event, if the petitioner wants the advantage of the exemption of the payment of customs duty, then he must suffer the payment of demurrage charges which may arise because of the exigency of the circumstances. In my judgment, the challenge to the payment of demurrage charges by the petitioner is without any basis and deserves to be repelled.

9. Shri Malik then urged that even assuming that the petitioner is liable to pay the demurrage charges, the amount of Rs. 10,810.75 charged by the authorities is incorrect. The learned counsel placed reliance upon the scales of rate approved and published by the Port Trust authorities under Sections 48 to 51 of the Major Port Trust Act, 1963. Shri Malik urged that the item which would be applicable is Item No. 85 and the rate which can be levied is Rs. 5/- per tonne. Item No. 85 covers the goods which are "textiles, cotton, silk, woollen and synthetic". The Port Trust authorities, on the other hand, claimed that the demurrage charges were determined with reference to the scale fixed under Item No. 92. Item 92 refers to "unspecified items, non-heavy lifts each package weighing less than 1 1/2 tonne" and the rate fixed is Rs. 16/- per tonne. In view of the rival claims, the question which requires determination is whether the items imported by the petitioner are textiles so as to attract Item No. 85 of the Scales of rates.

10. The petitioner has averred in paragraph 10 of the petition that the Customs authorities to give effect to the public notice dated November 29, 1961 permitted importation and clearance of the old or used garments or serviceable garments as rags. Shri Chinoy, the learned counsel appearing on behalf of the Port Trust, submitted that what was imported by the petitioner was garments unmotivated or mutilated not to the permissible extent and by no stretch of imagination such garments could be described as textiles. Shri Malik, on the other hand, urges that in the first instance, there is no material on record to establish that what was imported was mutilated garments and not pure rags. This submission of Shri Malik cannot be entertained because it is not in dispute that what was imported under the supervision of the S.T.C. was old garments in unmotivated or mutilated not to the expected degree. The reference to the public notice dated August 8, 1974 includes in "woollen rags", the waste woollen cloth whether woven or knitted which is left after a garment had been cut out including genuine tailor cuttings, piece ends, etc. The definition of woollen rags (New or Old) in public notice leaves no manner of doubt that what was imported under the supervision of the S.T.C. were the waste garments, soiled or torn as to be beyond cleaning or repair. The reliance of Shri Malik on the copies of the invoices does not advance the claim of the petitioner any further. The petitioner desires to take advantage of the exemption of payment of customs duty and it is futile to urge that what was imported was pure rags and old garments.

11. Realising this, Shri Malik submitted that the expression "textiles" under Item 85 of Scale of Rates would cover even the old garments. It is impossible to accede to this submission. What is contemplated by Item No. 85 is textile or the fabric and not the ready-made garments, Shri Malik placed reliance on the decision of the Division Bench of this Court in the case of Punjab Business & Supply Co. Pvt. Ltd. v. State of Maharashtra reported in 1977. 139 STC 386 = 1978 E.L.T. J 648 to urge that the expression "textile" would include the garments also. In my judgment, the decision of the Division Bench has no application to the facts of the case. The Division Bench was considering the definition of the term "cotton fabric" given in Item No. 12 of the First Schedule to the Central Excises and Salt Act, 1944 and held that the rags and Chin his are covered by the definition. The Division Bench observed that merely because cloth is sold in pieces and not in the form of Tag as or bales manufactured by the Mills, it does not cease to be manufactured cloth or cotton fabrics. Therefore, although rags and Chin his are pieces of cloth of regular shapes and sizes, it cannot be said that they are not manufactured cloth. In the present case, the question which arises is whether the expression "textile" in Item No. 85 of the Scale of Rates would cover the manufactured garments. In my judgment, it would not be possible to hold so. What was contemplated by Item No. 85 was "textile" or fabric in its pure form and not garments.

12. Reliance by Shri Chinoy in this connection on the decision of the Division Bench of the Mysore High Court in the case of H. Anjanappa & Son v. Commissioner of Commercial Taxes in Mysore, Bangalore reported in 1979, Vol. 26, Sales Tax Cases, 139 is very appropriate. The Division Bench was considering the ambit of Entry 8-A of the Fifth Schedule of the Mysore Sales Tax Act, 1957, and observed that worn out and torn old clothing pieces purchased through hawkers from the public and then sold for the manufacture of paper are not textiles exempted from the Sales Tax Act. The Division Bench observed that if old and worn out wearing apparel are purchased, they do not revert to the category of textiles, but they retain the character of wearing apparel liable to sales tax. In my judgment, on the plain reading of Item No. 85, it is clear that it would not cover the manufactured garments, but would restrict itself to the textile in its pure form. The Port Trust authorities were justified in levying demurrage charges at the rate mentioned in Item 92 of the Scale of Rates. The submission of the petitioner that the levy should be under Item No. 85 deserves to be turned down.

13. Accordingly, the rule is discharged with costs.