
(1965) 11 CAL CK 0018
In the Calcutta High Court
Case No : Civil Revn. No. 4697 of 1960

Jawhar Knitting Mills

APPELLANT

Vs

Collector of Customs and Others

RESPONDENT

Date of Decision : 19-11-1965

Acts Referred:

Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 117, 135, 140
Imports and Exports (Control) Act, 1947 — Section 3(2)
Sea Customs Act, 1878 — Section 167(8)

Citation : AIR 1967 Cal 200

Hon'ble Judges : B.N. Banerjee, J

Bench : Single Bench

Advocate : P.K. Banerjee, for the Appellant; Amiya Kumar Mukherjee, for the Respondent

Final Decision : Allowed

Judgement

B.N. Banerjee, J.—Under a license to import nylon buttons from soft currency area upto value of Rs. 8,000 the petitioner firm imported one consignment of buttons allegedly from Hong Kong of the value of Rs. 3612.54NP. (Rs. 3600/- according to affidavit-in-opposition), hereinafter referred to as the first importation. The goods were allowed to be cleared on payment of duty. When the next consignment of buttons, valued at Rs. 4360/- in the bill of entry, arrived, the clearance of the goods was held up because the customs authorities considered the declared value to be too low. The petitioner firm sought to justify the declared value on the theory that the goods being of Hong Kong manufacture, the value was cheap. In support of this theory, the petitioner produced before the customs authorities certain documents, which, however, failed to impress the customs authorities.

2. On March 18, 1960, the petitioner was charged with misdeclaration of the value of the consignment in the following language:--

"Examination reveals that the goods have been packed in small cartons on which no country of origin is indicated. Examination of the samples from the consignment further reveals that the subject goods are identical with goods of Japanese origin. The goods of, like kind and quality are correctly valued at Rs. 17/- per Gr. gross c. i. f. The correct value of the consignment on this basis comes to Rs. 18,530/-. It is, therefore, observed that by having declared the value of the goods to be Rs. 4360/- you have deliberately under-valued the goods to the extent of Rs. 14,170/-. You are, therefore, directed to show cause why the goods should not be confiscated u/s 167(37) Sea Customs Act and action taken against you as persons concerned in the deliberate misdeclaration of the value of the goods".

The petitioner firm showed cause, in writing denying the charge of mis-declaration. Along with the statement showing cause, the petitioner attached certain documents by which the petitioner aspired to establish the Hong Kong origin of the imported goods.

3. Thereafter, on April 19, 1960 there was another notice served upon the petitioner firm to show cause why the first importation of buttons should not be treated as unauthorised and action should not be taken against it u/s 167(8) of the Sea Customs Act, because of the following reason:

"The licence was issued under the "Export Promotion Scheme" for the period April-September '59 subject, inter alia, to the conditions laid down in para 6 of Appendix XXIII of the Policy Book for the corresponding period in terms of which you are required to export a specific variety of finished products up to a prescribed value (in this instance 400% of the c. i. f. value of the goods) within six months of the importation. As the period of six months is already over since the importation of the above noted consignment, you were asked under this office letter of even no. dated 19-3-60, to produce evidence of export of the finished products of proportionate value within a week so as to determine validity of the importation under reference as well as your competence to fulfil the conditions of the licence for further importations. You have, however, failed to comply with the requirements. It appears that your non-compliance with the condition of the licence has rendered the importation unauthorised in terms of Section 3 of the Imports and Exports (Control) Act '47 and the I. T. C. order dated 7-12-55 read with Section 19 of the Sea Customs Act, since the licence produced by you is valid to cover the importation only on condition specified above. You are, therefore, directed in show cause within a fortnight hereof why the importation should not be treated as unauthorised as stated above and action taken against you as persons concerned u/s 167(8) of the Sea Customs Act. You are also required to show cause why in the circumstances the licence under reference should not be treated as invalid for further importation, you being incompetent to fulfil the conditions laid down therein."

The petitioner firm showed cause in writing by which it disputed the jurisdiction of the customs authorities to take proceedings as proposed and asserted that the

conditions of the licence had all been fulfilled.

4. Lastly, on June 22, 1960, there was another notice served upon the petitioner firm asking it to show further cause in respect of the first importation, in the following language:-

"Re. 11 cases Nylon Buttons- Ex. S.S. Mikawa Maru Line No. 71 Rot. 1835/59.

This has reference to para 3 of the show cause notice of even no. dated 19-3-60 wherein it has been stated that the correct c. i. f. value of the goods is Rs. 18,535/-. The I. T. C. license No. 0.076635/56 dated 13-6-59 submitted by you for clearance of the consignment covers goods worth Rs. 4400/- i.e. only which is the balance available against the licence. It, therefore, appears that in addition to the charges mentioned in the aforesaid show cause notice goods worth Rs. 14130/- c. i. f. have been imported without a valid I. T. C. licence. You are therefore directed to show cause further why the goods valued Rs. 14130/- C. I. F. should not be confiscated u/s 167(8) Sea Customs Act read with Section 19 of the Sea Customs Act and Section 3 (2) of the Imports and Exports (Control) Act, 1947, and the I. T. C. order No. 17/55 dated 7-12-55 and why action be not taken against you as persons concerned in the unauthorised importation of the goods u/s 167(8), Sea Customs Act."

The petitioner showed cause denying the charge in the following language:--

"In our letters dated 9-4-60 and 17-5-60, We have fully explained the position supported by all relevant documents. Our partner Sri. T.R. Kapur also explained the whole position to you at the time of personal hearing on 27-5-60 and further documents whichever you wanted were also given to you. Our representative also offered to bear all the expenses for you to go to Hong Kong and to make enquiries there as regards the valuation of the goods. Even he produced a letter from the suppliers to show that they (suppliers) were prepared to supply 2000 G.G. of these quality buttons at the rate of 4sh. per G.G. as have been supplied to us. The charges of under-valuation are therefore absolutely imaginary and without foundation whatsoever.

At the said hearing you also stated that the department will definitely disclose the basis of the alleged valuation of Rs. 18530/ before any further action was taken in the matter. We have been greatly surprised to receive your letter, dated 22nd June, 1960, wherein you have again threatened us for action u/s 167(8) Sea Customs Act."

Thereafter, the petitioner was given a hearing by a Deputy Collector of the name of A.K. Bandopadhyaya. What happened before the Deputy Collector was that he produced some buttons of alleged Japanese origin and asked the representative of the petitioner firm to find out the distinguishing features between the said buttons and buttons said to have been taken out of the consignment imported by the petitioner firm. The petitioner condemns this procedure as unusual in paragraph 15 of the petition, in the following language:-

"Your petitioner had till then no opportunity of seeing his imported buttons and your petitioner and his Advocate expressed surprise as to why such an unusual procedure was being adopted by Shri Bandopadhyaya. Your petitioner however, pointedly brought to the notice of Shri Bandopadhyaya the utter futility of such a procedure and impressed on Shri Bandopadhyaya the genuineness of the documents he had produced in support of your petitioner's case, and the total absence of any genuine basis of the alleged suspicion of the Special Officer of the Appraising Section. Sri Bandopadhyaya thereupon agreed to have the genuineness of the documents tested and the statement contained therein verified through the India Embassy, Hong Kong."

The above allegations are not wholly denied in paragraph 17 of the affidavit-in-opposition wherein it is stated:

"At the time of personal hearing the petitioners' attention was drawn to certain inconsistencies in the documents produced by them, which they could not explain out suggested a reference to the Trade Representative at Hong Kong to verify the genuineness of the transaction. As to the samples shown, the petitioners conceded that the samples were indistinguishable. Save and except as aforesaid, I deny each and every allegation made in the said paragraph. As the issue was the question of value and not of country of origin the latter point was not pursued to any conclusion."

Thereafter, the petitioner firm was called for another hearing before the respondent Collector. What happened before the Collector, the petitioner firm says in paragraph 16 of the petition, was as follows:

"The Collector enquired of your petitioner and simply promised to look into your petitioner's case expeditiously. None was present on behalf of the appraising section, no question was asked and there was no occasion for your petitioner to say anything, as your petitioner could not understand the purpose for calling him. No paper was shown to him and until today your petitioner does not know whether the goods in Question were chemically examined or not and if so, what is the report of the Chemical Examiner on that point. Your petitioner does not know whether Sri Bandopadhyaya submitted a report or not."

These allegations are dealt with in paragraph 18 of the affidavit-in-opposition in the following language:

"At the time of personal hearing before the Collector of Customs, no points were raised by the petitioners. They only desired that the case might be adjudicated quickly. According to the normal procedure of the Customs House, the samples were tested in the Customs House Laboratory. The petitioners neither asked for any report nor did they raise any objection before the Collector at the final hearing. It was not incumbent upon the Customs authorities to communicate the findings of the chemical analysis report without any specific request from the petitioners which the petitioners did not make at any time whatsoever before adjudication."

The respondent Collector by his adjudication order, came to the following conclusion:

(a) "During the interview it was brought to Sri Kapur's notice that in one of the letters of the suppliers the buttons were stated as being manufactured in Hong Kong whereas in another letter it was mentioned that they were a stock lot. Further as regards the physical quality of the goods the samples from me consignment as well as the ones of Japanese manufacture collected from the market and from another consignment recently arrived from Japan was shown to Sri Tilak Raj Kapur and his Advocate. It was at once conceded by all of them that the samples were indistinguishable as regards quality. At their request, however, the chemical test of the buttons was made to determine the composition. The importers were also allowed to produce tesamples of buttons obtained by them from the market which they claimed to be of Hong Kong origin.

(b) The main contentions of the importers in support of their declared value were therefore that the goods were manufactured at Hong Kong and being of Hong Kong origin were cheaper than the Japanese buttons, The explanation of the importers is, however, not satisfactory. On test the sample produced by the importers as of Hong Kong origin together with samples from the consignment as well as sample imported at this port from Japan were found to be of the same quality and composition. In the face of it, it it difficult to accept price as a factor indicating the Hong Kong origin of the goods. As a matter of fact, price is not necessarily linked with such origin."

On the above findings he passed the following order:

"I accordingly order that the goods are to be assessed at the price of sh. 13-8 per Gr. gross c. i. f. and absolutely confiscate goods worth Rs. 10520 (representing the value of 1153 Gr. groses) u/s 167(8), Sea Customs Act read with Section 3(2) of the Imports and Exports (Control) Act, 1947. Considering the deliberate-ness of the offence, I also impose a personal penalty of Rs. 5,000 only on the importers u/s 167(8), Sea Customs Act to be paid into the Customs House Treasury forthwith."

Against this order, the petitioner firm moved this Court, under Article 226 of the Constitution, praying that the penal order be quashed and that the respondents be ordered to forbear from giving effect to the order.

5. In my opinion, there are two grounds on which this Rule must be made absolute. In the first place, the respondent Collector relied very much on the result of the chemical test report. That test according to the adjudication order was made at the request of the petitioner firm. It is not borne out by paragraph 18 of the affidavit-in-opposition, which I have already set out. There is also nothing to show that the petitioner firm made any request for test examination. I am, therefore, unable to accept the observation made in the adjudication order that the test was made at the request of the petitioner firm. The aforesaid observation is a loose observation and nothing more. This test report was

admittedly not divulged to the petitioner firm at the time of the personal hearing. If the respondent Collector wanted to rely on the test report, which he was at liberty to do, it was his duty to disclose the evidence to the petitioner firm and to give it an opportunity to rebut the same if it liked. This is the view expressed by the Supreme Court in the case of *Ambala v. Union of India* AIR 1961 SC 264 and *State of Mysore Vs. S.S. Makapur*, Not having done so, he violated the principles of natural justice and the order made by him cannot be sustained.

6. Then again, the hearing given to the petitioner was in two stages. A Deputy Collector first heard the petitioner firm and asked its representative to distinguish the imported buttons from samples said to have been taken out from consignments of alleged Japanese origin. It is said that before the Deputy Collector, the representative of the petitioner firm failed to find out any distinction. That fact was taken into consideration by the respondent Collector, who called the petitioner for a second hearing, although nothing like that happened before the Collector. In my opinion, when one hears and another passes the penal order, on evidence collected by the other, there are chances of miscarriage of justice and the adoption of such a procedure should not be encouraged. I do not, however, make much of this because the order must be set aside, in any event, on the ground of the violation of the principles of natural justice.

7. I, therefore, make this Rule absolute, without prejudice to the rights of the respondents to proceed against the petitioner firm afresh.

8. Let a Writ of Certiorari issue.

9. There will be no order as to costs.