
(1981) 10 BOM CK 0008
In the Bombay High Court
Case No : Misc. Petition No. 1099 of 1978

Kirloskar Cummins Limited

APPELLANT

Vs

Union of India and Three others

RESPONDENT

Date of Decision : 14-10-1981

Acts Referred:

Customs Act, 1962 — Section 157, 25(1), 46

Citation : (1982) 10 ELT 29

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

Bench : Single Bench

Judgement

1. The petitioners are a Company incorporated under the Companies Act and are running a factory at Pune where diesel engines are manufactured. The petitioners import diverse diesel engine components from United States for the purpose of their business and the components of such diesel engines attract Customs Duty as per the provisions of the Indian Customs Act read with the provisions of the Indian Tariff Act, 1934. Under the provisions of the Indian Tariff Act, the Customs duty on an ad valorem basis was levied on the components.

2. On November 25, 1967, in exercise of the powers conferred under sub-section (1) of Section 25 of the Customs Act, 1962, the Central Government issued Notification No. 114, inter alia, providing that where the goods are imported in India packed in any materials, the materials in which the goods are so packed would be exempt from the whole of the duty of customs including countervailing duty, provided that the goods were packed in materials normally used in trade for packing such goods and the packing was not suitable for repeated use. The petitioners were importing components from United States of America from their collaborators Cummins Engine Company and the practice generally followed by the suppliers was to charge from their buyers the price of the particular components and a standardised packing charge at the rate of 4% of the value of such material. The components were packed in ordinary wooden boxes and creates which where not suitable for repeated use as they were fragile and often

broke during handling. After the date of the Notification, certain consignments were imported by the petitioners and the petitioners claimed that the assessable value of the goods for the purposes of customs duty should be computed by excluding from the total invoice value the 4% packing charges. The Assistant Collector of Customs did not accept the claim and so also the Appellate Collector. The petitioners carried a revisional application before the Government of India, Ministry Finance, and by an order dated May 26, 1973, the claim of the petitioners was accepted. The revisional authority accepted various certificates issued by the various carriers certifying that the packing material was ordinarily used in trade for packing and was not durable. In pursuance of the order of the authorities, the petitioners became entitled to claim that the assessable value should exclude the packing charges of 4% as mentioned in the invoices.

3. The Central Government in supersession of the Notification No. 114 published Notification dated June 10, 1972 in exercise of the powers under sub-section (1) of Section 25 of the Customs Act. By this Notification, an additional condition was included to claim benefit under the Notification. The additional condition was that the value of the packing material should be included in the value for which the goods contained in the invoices. It would be appropriate to quote this additional condition :-

"Value of the packages or containers or the like in which the goods are packed is included in the value for which the goods contained therein have been invoiced."

After this Notification, the petitioners imported components by diverse consignments from time to time. In all these consignments, the invoices mentioned the value of the goods and the value of boxing charges or packing charges, pier delivery, ocean freight and forwarding charges separately. The Total C.I.F. value was calculated after adding the several items set out in the invoice. After the consignments arrived in India, the petitioners claimed that the assessable value of the goods should be determined for the purpose of excise duty by excluding the amount of packing charges. The contention was turned down by the authorities and the petitioners were required to pay the customs duty on the entire value of the consignments including the packing charges. The petitioners paid the duty under protest and filed 70 refund applications in respect of the consignments which arrived between the years 1973 and 1976. The details of these consignments can be found by reference to Ex. H and Ex. J annexed to the petition.

4. All these 70 refund applications were rejected by various orders passed by the Assistant Collector of Customs from time to time. The Assistant Collector came to the conclusion that the additional condition which was added by the Notification was not complied with by the petitioners as the value of the boxes was shown separately in the invoices and the value of packages mentioned in the invoices cannot be taken as evidence in respect of the consignments.

Thursday the 15th October, 1981

5. The petitioners carried appeals against the rejection of 70 applications and all these 70 appeals were disposed of by 16 different orders passed by the Appellate Collector of Customs. These 16 appellate orders are passed by various officers and the orders are annexed as Ex. I and Ex. K to the petition. The appellate authority broadly took a view that the invoices produced by the petitioners determined the boxing charges at 4% of the value of the goods imported and, therefore, it is not possible to conclude that the actual value of packing is mentioned in the invoices. Some of the orders proceed on the ground that the boxing charges were shown separately in the invoices and, therefore, the additional condition included in the subsequent notification was not fulfilled. Some of the orders proceed on the basis that the notification merely exempts normal containers or packages for separate levy of duty as distinct from goods packed in them and in the petitioners' case the containers have not been separately charged to duty and the Customs House has, in fact, given the benefit of the notification and therefore the plea that the boxing charges are totally exempt from duty is untenable. I am unable to appreciate what exactly the appellate authority desires to convey by these observations. There is one more observation which is found in some of the appellate orders and i.e. that the notification has to be interpreted to mean that packages or containers or the like, satisfying the conditions stipulated therein, should not be charged to duty as the item separate from the goods packed therein, when their value is included in the value of the goods and for the purpose of levy of duty, their identity is merged with the goods packed therein.

6. The petitioners carried revisional applications before the Government of India, Ministry of Finance, Department of Revenue, and the revisional authority disposed of the 16 revisional applications by a consolidated order dated January 5, 1978. The copy of the order passed by the revisional authority is annexed as Ex. M to the petition. The revisional authority dismissed the revisional applications only on one ground and that is that as the boxing charges are shown separately in the invoices, the Condition No. 1 under the Notification dated June 10, 1972 is not complied with. The revisional authority proceeds to observe that from the intention of the Government, it is clear that the assessment of the goods should be on the basis of the invoice value which should be deemed to cover the complete consignment, both of the goods as well as of the packing. The petitioners have approached this Court by filing this petition under Article 226 of the Constitution of India on August 2, 1978 to challenge the legality of the orders passed by the authorities below.

7. Shri Setalwad, the learned counsel appearing in support of the petition, submitted that the petitioners have more than satisfied Condition No. 1 included in the Notification dated June 10, 1972 and are, therefore, entitled to claim exemption from payment of duty in respect of value of packages or containers. As the revisional authority has proceeded to dismiss the refund applications only on the ground that Condition No. 1 of the Notification was not fulfilled, it would be convenient again to set out that condition for easy reference. Condition No. 1

provides that exemption will be available provided that the value of packages or containers or the like in which the goods are packed is included in the value for which the goods contained therein have been invoiced. The plain reading of this condition indicates that what is required by this condition is that the value of packages or containers should be included in the value set out in the invoices. Turning to the invoice in the present case, a copy of which is annexed as Ex. A to the petition, it is noticed that the value of the goods, value of the boxing charges, pier delivery, ocean freight and forwarding charges is set out separately and ultimately the C.I.F. value is arrived at by adding the total of these items.

8. Shri Dalal, the learned counsel appearing on behalf of the Department, submitted that this is not sufficient compliance with the condition provided in the Notification. The learned counsel urged that as the invoice shows the value of goods and value of packing separately, the requirement of condition was not satisfied. Shri Setalwad, on the other hand, contends that merely because the invoice gives the break up of the C.I.F. value by mentioning each of the items separately, it cannot be claimed that the condition is not satisfied. In my judgment, the submission of Shri Setalwad is correct. What the condition of the Notification demands is that the value of the packages or the containers should be included in the invoices itself. It would not be proper to construe it as to hold that unless the value of the packages and value of the goods is combined and stated in the invoice, the advantage of the Notification is not available. I enquired from Shri Dalal as to what purpose would be served by compelling the importer to include the value of the packing in the value of the goods sold and then calling upon the importer to explain as to what is the value of the packages for the purpose of exemption. In my judgment, if the invoice includes the value of the packages or containers, then merely because it is not added to the value of the goods and shown separately is not sufficient ground to deprive the importer of the advantage of the Notification.

9. Shri Dalal submitted that the Notification should be strictly construed and the strict construction demands that the value of the packages and value of the goods cannot be shown separately in the invoices. The learned counsel relied upon the decision of the Supreme Court in the case of *Hansraj Gordhandas Vs. H.H. Dave*, Assistant Collector of Central Excise and Customs, Surat and Others, to urge that the notification has to be judged not by the object which the rule-making authority has in mind but by the words which it has employed to effectuate the legislative intent. There can be hardly any dispute about the proposition urged by the learned counsel, but in my judgment, the express words of the notification leave no manner of doubt that the petitioners are entitled to the advantage of the notification as the requirement of Condition No. 1 was more than satisfied.

10. Shri Setalwad very rightly pointed out that the earlier notification dated November 25, 1967 did not contain the condition and the same was inserted in the Notification dated June 10, 1972 because it was noticed that there may be

certain import where the importers had not paid any value for the packages or the containers and in spite of that the advantage of the Notification was claimed by urging that the price of the goods includes the value of the containers. Shri Setalwad also relied upon the form of invoices provided by the Bill of Entry (Forms) Regulations, 1976 framed in exercise of the powers conferred by Section 157, read with Section 46 of the Customs Act and submitted that the forms do not require that the value of the goods and the value of the containers cannot be shown separately. The learned counsel urged that the invoices filed by the petitioners are in accordance with the regulations framed and it is not open for the authorities to deny the advantage of the notification on a ground which is neither rational nor in accordance with law. The submission is correct and deserves acceptance. Shri Setalwad also points out that as regards the other two conditions on the previous occasion the revisional authority has come to the conclusion that the certificate produced by the importers establishes that the packages are not dutiable and are not suitable for repeated use and the packages used are such which are normally used in the trade. Shri Setalwad points out that in view of the earlier decision, the revisional authority has denied the claim in the present case only on the ground of non-compliance with the first condition. As it is found that the petitioners have complied with the additional condition provided in the Notification dated June 10, 1972, the orders passed by the authorities below cannot be sustained. In my judgment, the petitioners are entitled to the refund as claimed by them.

11. Accordingly, the petition succeeds and the rule is made absolute in terms of prayer (b), of the petition. It is not in dispute that the amount claimed by the petitioners as refund is properly calculated. In the circumstances of the case, there will be no order as to costs. The respondents are directed to pay the amount of refund within a period of three months from today.