(1996) 02 DEL CK 0090

In the Delhi High Court

Case No : Civil Writ Petition No. 47 of 1978

Krishna and Co. APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 20-02-1996

Acts Referred:

Customs Act, 1962 — Section 111, 112, 124

Citation : (2003) 159 ELT 32

Hon'ble Judges : A.D. Singh, J

Bench : Single Bench

Advocate : S.K. Dholakia and S.K. Gupta, for the Appellant; Madan Lokur, Central Govt. Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Anil Dev Singh, J.—This is a writ petition whereby the petitioner seeks quashing of the Order No. 102A of 1977, dated June 18, 1977, passed by the Special Secretary to the Government of India whereby the confiscation of consignment of 48 cases of ball bearings of which clearance was sought against Bill of Entry No. H.1118/16, dated November 16, 1973, was rejected by the Customs authorities. The petitioner also seeks a direction to the responder its to refund the fine of Rs. 44,800/- paid by it for redeeming the imported goods, and for refund of personal penalty of Rs. 12,800/- imposed on it u/s 112 of the Customs Act, 1962.

2. An import license dated January 10, 1972, for a value of Rs. 5 lakhs was issued in favor of M/s. Project Equipment Corporation of India Ltd., one of the canalising agencies. Against the aforesaid import license with letter of authority issued in favor of the petitioner to import non-restricted type of Ball, Roller and Taper Roller Bearings and components, the petitioner imported ball bearings from M/s. Machine Export, Sofia, Bulgaria. In the Bill of Lading dated August 30, 1973 (Annexure ''A'', page 45 of the writ record) the goods were described as follows :-

"K & Co. - Bombay BALL BEARINGS Gross Weight Type 305/24x61x16

305/24x61x16 Kgs. 2640.- Machinoexport Sofia/Bulgaria Kom Nr 48273054 Dynamic 1460 2m3 Static 940 48 Wooden cases Say Forty eight cases only. Clean on board."

3. The petitioner on being informed about the arrival of the goods applied for their clearance by filing a Bill of Entry No. 1118, dated November 16, 1973 with the declaration that the consignment contained ball bearings of type 305 of size/ dimensions 24x61x16 mm substandard. The goods, however, were not cleared by the Customs authorities on the ground that on exmination of the goods it was found that dimensions of the imported ball bearings were 25x62x17 mm, and were different from the ones declared in the invoice and the Bill of Entry.

4. On April 3, 1974, a notice was issued by the Appraiser (Special Investigation and Intelligence Branch) to the petitioner requiring it to show cause why the goods in question be not confiscated u/s 111(d) and (m) of the Customs Act, 1962, and why penal action should not be taken against it u/s 112 thereof. The notice also required the petitioner to indicate as to whether it would like to be heard by the Deputy Collector of Customs, Incharge, Special Investigation & Intelligence Branch.

5. Pursuant to the show cause notice the petitioner submitted its reply to the Incharge, Special Investigation & Intelligence Branch, New Custom House, Bombay, on April 18, 1974. In the reply it was denied that the ball bearings imported by the petitioner were of size 25x62x17. It was submitted that the dimensions of the ball bearings were not correctly taken by the Customs authorities. Further it was contended that only the standard ball bearings of the size 25x62x17 (SKF No. 6305) were banned and not substandard ball bearings of the type 305 and size 24x61x16. It was also pointed out that the Customs Department had relied on the opinion given by M/s. S.K.F. India Bearing Co. Ltd. which could not have been taken into consideration as they were competitors in the trade of ball and roller bearings. The petitioner also referred to certain test reports from the National Physical Laboratory, New Delhi, and Shriram Test House and canvassed that the ball bearings imported by it were not of a banned variety. The petitioner was also heard by the Incharge, Special Investigation and Intelligence Branch, New Custom House, Bombay.

6. It may be mentioned that the Embassy of the Republic of Bulgaria in New Delhi, by its letter dated April 19, 1974, wrote to the Special Investigation and Intelligence Branch, New Custom House, Bombay, stating that the petitioner had handed over a copy of the show cause notice dated April 3, 1974, to the Embassy and the contents of the same had been carefully examined by it. It was also stated that the bearings in question had been supplied on the basis of the sizes mentioned in the leaflet enclosed with the letter of the Embassy. It was further pointed out that the leaflet was meant for substandard types of bearings manufactured by the Bulgarian Enterprise, M/s. Machine-Export Co. Ltd. According to the letter, it was the policy of the said Bulgarian enterprise to treat those bearings as substandard ones and sell them as such which on test did not

conform to the correct hardness, dimensions and weight of the Bulgarian standard bearings. As per the letter, the standard bearing 305 should have the following requisites :

Hardness Weight Dimensions Load bearing capacity 64 230 grams 25x62x17 mm Dynamic 1660, Static 1150

Regarding the ball bearings in question it was stated that they did not conform to these standards, and, Therefore, the bearings were described and sold as substandard bearings of the size 24x61x16 mm. The Embassy also expressed the view that the bearings of the type 305 were not of banned category as per the policy of the Government of India.

7. On July 3, 1974, the Appraiser, Special Investigation and Intelligence Branch, informed the petitioner that the department was not proposing to rely upon the opinion given by M/s. S.K.F. India Bearing Co. Ltd., and, as desired by the petitioner at the time of personal hearing granted to it by the Collector of Customs, twelve representative samples of the imported bearings were drawn from the consignments in question on June 13, 1974 and ten out of these samples were tested in the Custom House Laboratory for their dimensions and the remaining two samples were tested at National Test House, Bombay Branch. It was pointed out that from the test results it was apparent that the bearings imported were of banned sizes or of near banned sizes. By the said letter the petitioner was called upon to make further submissions, if any, and to show cause to the Collector of Customs, Bombay, why the goods in question should not be confiscated u/s 111(d) and (m) of the Customs Act, 1962, and why penal action should not be taken against it u/s 112 thereof. The personal hearing of the petitioner was fixed for July 17, 1974.

8. On receipt of the supplementary show cause notice, the petitioner sent its further reply to the Collector of Customs, New Custom House, Bombay, on July 15, 1974, in which it was again stressed, inter alia, that the ball bearings imported were not banned as they were not of the size 25x62x17 mm and were substandard ones.

9. The Collector of Customs, Bombay, by his order dated 23/24th of July, 1974, rejected the stand of the petitioner and held that the imported bearings were of the size 25x62x17 mm or very close to these dimensions. He was of the view that the goods were materially different from the one declared in the Bill of Entry and Bill of Lading. He ordered that the offending goods should be confiscated u/s 111 and 111(d) of the Customs Act. However/he allowed the petitioner to redeem the confiscated goods on payment of a fine of Rs. 44,800/-. He also imposed a redemption fine of Rs. 12,800/- on the petitioner u/s 112 of the Customs Act. While coming to the conclusion that the goods were of a banned category as per the relevant Import Trade Control Policy, he took into consideration the test reports. The Collector also noticed the contentions of the petitioner that the goods were not of a banned category and were of type 305

and dimensions 24x61x16 and were also of a substandard type. He also took into consideration the letter of the Bulgarian Embassy dated April 19, 1974, but was not convinced with the Explanation given therein.

10. Aggrieved by the order of the Collector of Customs, the petitioner filed an appeal to the Central Board of Excise & Customs. However, on June 5, 1976, the Board rejected the appeal and confirmed the order passed by the Collector. Thereafter, the petitioner filed a revision before the Government of India, Department of Revenue and Banking, but it met the same fate and was rejected on June 18, 1977. Thus, all the three authorities held that the goods were of banned category as they were covered by Appendix 14(1)(a) [Section II-S, No. 19(1)(i)/II] of the relevant Import Trade Control Policy and were of the type 6305 and of the size 25x62x17 mm.

11. The main contention of the learned Counsel for the petitioner is that the ball bearings imported by the petitioner were different from the ball bearings which were banned under the relevant Import Trade Control Policy. He submitted that the test reports revealed that the ball bearings imported by the petitioner were not of the sizes 25x62x17 mm but were of the sizes less than the aforesaid dimensions. He also submitted that the ban related to the standard bearings only. The bearings imported by the petitioner, according to him, were substandard bearings and, Therefore, were not banned. In this regard he invited my attention to foot Note 3 of Appendix 14(1)(a) of the Policy, which reads as under :-

"The ban relates to the standard bearings only. Import of extra precision and heavy duty bearings having dimensions same as listed in this appendix will be considered in consultation with DGTD."

12. It was further argued that since the ball bearings were not of the size 25x62x17 mm, and were close to it, which means that there was difference in the dimensions in fractions of a millimetre, they could not be considered as banned type of ball bearings.

13. On the other hand, learned counsel for the respondents submitted that all the administrative authorities have come to a finding that the ball bearings imported by the petitioner were of the type which were banned under the relevant Import Trade Control Policy. He further contended that in writ jurisdiction the Court is not sitting in appeal over the decision of an administrative authority and the Court can only interfere if the decision of the administrative authority is arbitrary, irrational or suffers from a patent illegality. In support of his contention learned counsel relied upon two decisions of the Supreme Court in Girdharilal Bansidhar Vs. Union of India (UOI), and Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others, .

14. I have considered the submissions of learned counsel for the parties. Certain basic features of the case are not in dispute. It is not disputed that in the invoice and the bill of entry the type and size of the ball bearings are given as 305 and

24x61x16 millimeters respectively. There is also no controversy that the ball bearings on actual inspection were not found of the dimensions as given in the invoice and the bill of entry. The sizes of the ball bearings imported by the petitioner, as per one of the test reports which can serve as an illustration, are as follows :-

"SG-14/74A Lab. No. 3133-4419-6-74.

Ball Bearings Type 305 up to 60 mm Following are the results of the 12 Ball bearings.

Case No. & Sample No. Inner Dia (mm) Out Dia (mm) Width (mm) Weight (gms)

174/1 25.00 62.00 17.00 225.700

II 24.95 61.95 17.00 225.900

III 24.85 62.00 17.00 226.000

183/1 25.00 62.00 17.05 224.900

II 24.95 61.95 17.05 225.000

III 25.00 62.00 17.00 226.150

156/1 24.95 62.00 17.00 225.500

II 24.95 62.00 17.00 224.600

III*

190/1 25.00 62.00 17.00 225.400

II 25.00 62.00 17.00 225.200

III*

xx xx xx sd/- 25-6-74." Thus, it is clear that some of the ball bearings are of the size 25x62x17 mm while the others are close to this size.

15. In the notice issued to the petitioner u/s 124 of the Customs Act it was brought out that the petitioner had asked M/s. Machin-Export Co. Ltd., its suppliers, to vary the size of the ball bearings to be supplied to it. This fact does not seem to have been specifically controverter in the reply to the show cause notice. What was denied was that the ball bearings imported by the petitioner were not of a banned type. It was also stated that the bearings whose dimensions differ from size 25x62x17 mm by more than permissible tolerance cannot be held to be of size 25x62x17 mm. The other contention of the petitioner in reply to the show cause notice was that the ball bearings imported by it were ones which were not banned. It was also pointed out that the weight of each of the ball bearings imported by the petitioner was 223 grams, while ball bearing of type SKF 6305 weighs 230 grams. As a sequestor it was submitted

that the difference in weight confirms that the bearings imported are of smaller dimensions than SKF bearings No. 6305. The purpose of pointing out the contention raised by the petitioner in the reply to the show cause notice, is to show that the petitioner did not controvert the correctness of the fact that it had asked the suppliers to vary the dimensions of ball bearings to be supplied to it. In case the petitioner wanted to import ball bearings of the size 24x61x16 mm, then in that event where was the necessity to ask the supplier to make deviations in the dimensions thereof. The submission of the learned counsel for the petitioner that the ball bearings which were imported by the petitioner were of substandard type, their dimensions, weight and hardness being different from the banned ball bearings of the type SKF 6305 and of the size 25x62x17 mm, cannot be raised with any amount of conviction in view of the relevant provisions of the Import Policy as incorporated in Column 4, Remark No. (iii) against Item No. 19(1) at page 49 of the Import Trade Control Policy, Volume I, for the period April, 1971 to March, 1972. The relevant portion of the Policy reads as follows :-

Part & S No of ITC Schedule Description   Import Policy

Established Importers Actual User

1 2 3 4

XX XX XX XX

PART II counted 19(1) Ball Bearings

(iii) Import of ball bearings of size men tioned in Appendix 14(l)(a), 14(2)(a) 14(3)(a) and 14(4)(a) will not be permit ted

16. Thus, it is apparent from Remark No. (iii) that the import of ball bearings of the size mentioned in Appendix 14(1)(a) will not be permitted. According to this remark what is to be taken into consideration is the size of the ball bearings for the purpose of finding out whether or not a particular variety of ball bearings can be imported under the Import Trade Control Policy. The hardness or the weight of the ball bearings is not relevant. Learned counsel for the petitioner invited my attention to Note 3 to Appendix 14(1)(a) [Section II-S, No. 19(1)(i)/II], which reads as follows :-

"3. The ban relates to the standard bearings only. Import of extra precision and heavy duty bearings will be considered in consultation with DGTD."

This note does not help the petitioner. It is not the case of the petitioner that it had made the import of extra precision and heavy duty bearings in consultation with the DGTD. The fact that the bearings have different dimensions do not make them substandard ones. As already seen, the import of ball bearings of the size mentioned in Appendix 14(1)(a) is not permitted. The authorities have only to go by the size of the bearings for finding out as to whether the import is banned or not. The further contention of the learned counsel for the petitioner is that since the policy does not bar the import of ball bearings of the sizes falling between the bearings of the dimensions 24x61x16 mm and 25x62x17 mm the authorities were not right in finding fault with the import of ball bearings close to the size 25x62x17 mm. He submitted that the policy has taken care to specifically mention the sizes of banned ball bearings with dimensions in fraction of a millimetre but significantly ball bearings with sizes between 24x61x16 mm and 25x62x17 mm, i.e., in excess of the former by less than a millimetre, are not mentioned and consequently are not covered by the ban.

17. This argument of the learned counsel is devoid of any force. The petitioner has not been able to show that the ball bearings purported to be of type 305 imported by it with dimensions in fractions and in excess of the size 24x61x16 mm and close to the size 25x62x17 mm can be traded as bearings of the size 24x61x16 mm and not as bearings of the size 25x62x17 mm. It is pointed out in the impugned order passed by the Central Board of Excise and Customs dated June 5, 1976, that the petitioner had admitted before it that the Bulgarian bearing No. 305 was equivalent to SKF No. 6305 of the size 25x62x17 mm as per regular catalogue of the supplier. It is well settled that the Court while exercising jurisdiction under Article 226 of the Constitution does not sit as a Court of appeal over the decision rendered by an administrative authority. The Court is mainly concerned with the manner in which the decision has been arrived at by the administrative authority. In Mansarover Builders (P) Ltd. v. Union of India and Ors. (CWP No. 3192 of 1993, decided on September 29, 1995) this Court held as under :-

"Thus it can be concluded that judicial review cannot be treated as an appeal from the decision of a Tribunal. Its scope is limited and is directed to the manner in which the decision was made. The High Court in exercise of its extraordinary jurisdiction cannot sit in judgment over the correctness of the decision but is concerned only with the correctness of the decision making process. It can only interfere if the decision of an authority or a Tribunal is not grounded on any evidence or is based on surmises or proceeds on irrelevant factors and is so manifestly unreasonable that no reasonable person would on given facts and circumstances come to the conclusion reached by it."

18. In the instant case the decision of the authorities do not suffer from any of the maladies pointed out in the aforesaid decision.

19. For the foregoing reasons the writ petition has no merit and the same is dismissed and the rule is discharged. There will be no order as to costs.