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(1991) 04 CAL CK 0002

In the Calcutta High Court

Case No : Civil Order No. 6624 (W) /91

Lakhotia Udyog — APPELLANT

Vs

Union of India (UOI) — RESPONDENT

Date of Decision : 22-04-1991

Acts Referred:
Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 111(d), 24
Imports and Exports (Control) Act, 1947 — Section 3(1)

Citation : (1992) 58 ELT 385

Hon'ble Judges : Ruma Pal, J

Bench : Single Bench

Advocate : S.K. Bagoria, for the Appellant;N.C. Roychowdhury and S.K. Sengupta, for the Respondent

Judgement

Ruma Pal, J.—The petitioner''s case is that it carries on business of manufacturing brass slabs. The petitioner entered into a contract with a foreign supplier for import of yellow brass scrap "Honey" (hereinafter referred to as the said scrap) for such business. The foreign supplier shipped 18,938 kgs. of the said scrap which arrived in Calcutta on 12th October, 1990. The petitioner filed a Bill of Entry which was assessed by the Customs Authority to duty amounting to Rs. 4,26,200/-. The petitioner paid the assessed duty. Subsequently the said scrap was examined by the Customs Authorities and it was found that there were several buttons/pieces of snap fasteners lying mixed with the said scrap. The total quantity of the buttons/snap fasteners was found to be 1,211.7 kgs. Upon being asked for an explanation regarding the presence of the buttons/snap fasteners, the petitioner filed a certificate given by the foreign suppliers with the Customs Authorities, under cover of a letter dated 14-12-1990. In the letter the petitioner stated that the buttons/snap fasteners were in fact brass scrap as they were not in good condition and did not form complete sets and could not be utilised for any purpose other than melting. A personal hearing was granted to the petitioner by the respondents. At the personal hearing the petitioner

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submitted that if the Customs Authorities had doubt regarding the utility of the buttons/snap fasteners, the same may be mutilated before allowing clearance of the same to the petitioner. It was in this context that an order was passed by the Additional Collector of Customs (being the Respondent No. 1 herein) on 10-1-1991 rejecting the petitioner''s contentions.

2. The petitioner has challenged the said order dated 10th January, 1991 (hereinafter referred to as the impugned order) in this writ application. By the said impugned order the goods imported by the petitioner were confiscated u/s 111(d) of Customs Act, 1962 (hereinafter referred to as the 1962 Act) read with Section 3(1) of the Import and Export (Control) Act, 1947 (hereinafter referred to as the 1947 Act). By the impugned order the petitioner was given an option to redeem the imported scrap on payment of a redemption fine of Rs. 2,00,000/-. A personal penalty of Rs. 25,000/- was also imposed. The impugned order also provided "the entire quantity of metal buttons/snap fasteners may be mutilated to the satisfaction of the Customs Department as scrap before being released to the importer".

3. The petitioner''s contentions are as follows:-

(i) The Customs Authorities should have at least released the balance of the said scrap in respect of which there was no dispute.

(ii) The buttons/snap fasteners were in fact scrap and fulfilled the specifications laid down by the Institute of Scrap Re-cycling Industries, Washington. It is further contended that the buttons/snap fasteners were "waste and scrap" within the definition in Section Note No. 6(a) of Section XV of the Schedule to the Customs Tariff Act, 1975. It is pointed out that the Respondent No. 1 had admitted that the condition of the said buttons/snap fasteners was not good.

(iii) Having given the petitioner the option to clear the buttons/snap fasteners after mutilation of the same, there was no warrant for the Respondent No. 1 either imposing any redemption fine or levying any penalty.

4. The petitioner has relied upon the following decisions to contend that there was no alternative remedy available to the petitioner:

(a) 1983 ECR 305D

(b) Government of India Vs. English Electric Company of India Ltd., Madras,

(c) 1985 (21) ELT 590

(d) Union of India and Others Vs. T.S.R. and Co.,

(e) Gonterman Peipers (India) Limited Vs. Additional Secretary to the Government of India,

(f) Filterco and Another Vs. Commissioner of Sales Tax, Madhya Pradesh and Another,

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(g) Collector of Customs v. Swastika Woollen Industries reported in 1990 (47) ELT 216.

5. On the other hand, the respondents have contended as follows:-

(I) Metal buttons/snap fasteners were covered by Appendix 17 of Part III of the ITC Policy of 1990-93. As such the petitioner was bound to obtain a licence before importing the same. As the petitioner had not any such licence, the import was unauthorised.

(II) The petitioner had misdeclaired the buttons/snap fasteners as brass scrap and as such the said buttons/snap fasteners were liable to confiscation u/s 111(d) of the 1962 Act.

(III) The total of the scrap was liable to confiscation on the ground that the same had been used to conceal the restricted goods u/s 119 of the 1962 Act.

(IV) The impugned order was reasonable and if the petitioner was aggrieved by the same, the petitioner could have recourse to the alternative remedy available to it under the 1962 Act.

6. The cases cited by the petitioner are authorities for the proposition that the Court will interfere with the order of quasi-judicial authority such as the Respondent No. 1 under Article 226 of the Constitution provided the circumstances so warrant. In this case there are ample grounds for interference with the impugned order.

7. It is apparent from a reading of the impugned order that the Respondent No. 1 has proceeded on an erroneous assumption of fact. Furthermore the Respondent No. 1 has not applied his mind at all to the relevant considerations.

8. Firstly in the impugned order the Respondent No. 1 has proceeded on the basis that 2/3rd of the consignment consisted of parts of metal buttons/snap fasteners. It is a matter of simple arithmetic that 1,211.7 kgs. does not amount to 2/3rd of the total of the said scrap which was 18,938 kgs.

9. Secondly, the Respondent No. 1 has not addressed himself at all to the certificate of the foreign seller to the effect that defective/rejected buttons, scrap etc. conform to the specifications for grade "Honey" scrap. In fact the Respondent No. 1 himself admits that the buttons/snap fasteners were "in not so good a condition".

10. Thirdly, the Respondent No. 1 also has not considered the effect of the offer of the petitioner as recorded in his order that goods should be released after proper mutilation.

11. Fourthly, to have confiscated the entire amount of scrap u/s 119 the Respondent No. 1 should have at least come to a finding that the said scrap was used to hide the offending articles. This would mean a finding that the petitioner had the necessary animus to conceal the offending goods. There is no such

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finding. In fact the Respondent No. 1 has not even adverted to Section 119. Therefore the precondition to the exercise of power u/s 119 of the Act being wholly absent, the order of confiscation of the entire amount of scrap cannot stand.

12. Fifthly and finally, the Respondent No. 1 having himself directed the goods to be mutilated to the satisfaction of the Customs department before release to the petitioner could not at the same time direct redemption of the same by payment of fine of Rs. 2 lakhs (Rupees two lakhs).

13. Section 24 of the 1962 Act provides as follows:-

24. Power to make rules for denaturing or mutilation of goods. - The Central Government may make rules for permitting at the request of the owner the denaturing or mutilation of imported goods which are ordinarily used for more than one purpose so as to render them unfit for one or more of such purposes and where any goods are so denatured or mutilated they shall be chargeable to duty at such rate as would be applicable if the goods had been imported in the denatured or mutilated form.

14. u/s 24 therefore after mutilation there cannot be any question of evasion of duty on the basis that the offending goods were scrap.

15. Although no rules framed u/s 24 have been produced before this Court, the rules would at the best be procedural for the purpose of permitting mutilation of imported goods. However, the substantive portion of the section matters. It is clear that if any goods are mutilated they shall be chargeable to duty only at the rate applicable to goods in mutilated form. In view of the finding of the Respondent No. 1 himself that the buttons/snap fasteners were not in good condition it cannot be disputed that the offending goods could have been utilised as scrap. The petitioner in this case had at the first instance itself requested for mutilation of the buttons/snap fasteners so that they could only be used for scrap after the mutilation. What would be released to the petitioner would therefore be only scrap. By directing duty to be charged on the basis that the goods had been imported in the mutilated form, Section 24 of the 1962 Act creates a fiction as if the goods had been imported in the mutilated form. This at least appears to be an equitable and rational approach to the problem. The respondents cannot both mutilate the buttons/snap fasteners into scrap and at the same time treat the same as an import of buttons/snap fasteners for the purpose of imposing redemption fine and penalty.

16. For the reasons aforesaid the impugned order cannot be sustained. However, even if I set aside the impugned order the Respondent No. 1 will have to readjudicate the matter.

17. At the same time the Court cannot lose sight of the fact that the reason for the detention of the said scrap including the buttons/snap fasteners is wrong. In the circumstances I dispose of the writ petition by the following order:-

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(I) The impugned order dated 10th January, 1991 is set aside.

(II) The petitioner will deposit in cash with the Collector of Customs, Calcutta or furnish a Bank Guarantee for Rs. 25,000/- (Rupees twenty-five thousand) and an I.T.C. Bond for Rs. 2 lakhs (Rupees two lakhs). The Bank Guarantee must be in favour of the Collector of Customs, Calcutta. The Bank Guarantee will be of a nationalised Bank and will be kept renewed until the final determination of the petitioner''s liability in respect of the said import. The Bank Guarantee will contain a clause that in default of the petitioner renewing the bank guarantee, the Bank will of its own and forthwith deposit with the Collector of Customs, the entire guaranteed amount. If the amount is deposited in cash, the Collector will deposit the same in a short term fixed deposit account with a nationalised Bank and hold the receipt and renew the same pending the final disposal of the adjudication proceedings.

If the petitioner is successful ultimately in the adjudication proceedings the entire amount of Rs. 25,000/- together with all accumulated interest therein will forthwith be made over to the petitioner. If the amount is secured by a Bank Guarantee the same will stand discharged. If on the other hand the decision ultimately is against the petitioner then no effect will be given to such decision for a period of two weeks, whereafter the respondents will be at liberty to enforce the said decision against the petitioner by encashing the fixed deposit receipt or Bank Guarantee as the case may be.

(III) Subject to clause (ii) above the respondent will release the said scrap (excluding the offending goods) forthwith to the petitioner. The said buttons/snap fasteners will be released to the petitioner only after the same have been mutilated to the satisfaction of the Customs Authorities. Such mutilation must be completed within 72 hours of the petitioners complying with clause (ii).

(IV) The Respondent No. 1 will re-adjudicate the matter after giving the petitioner an opportunity of being heard and keeping in view the observations contained in this judgment. The petitioner will be entitled to urge all points taken in this proceeding before the Respondent No. 1.

18. The writ petition is thus disposed of. There will be no order as to costs.

19. Let a xerox copy of the operative portion be given to the learned Counsels appearing for the parties on payment of usual charge.

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