**(1981) 12 KAR CK 0013**

**In the Karnataka High Court**

**Case No :** WP 23588/81

Lekhraj Jassumal and Sons APPELLANT

Vs

Collector of Customs and Cen. Excise and Others RESPONDENT

**Date of Decision :** 03-12-1981

**Acts Referred:**

Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 111

**Citation :** (1982) 1 KarLJ 378

**Hon'ble Judges :** M. P. Chandrakantaraj Urs, J

# Judgement

1. The 1st petitioner is a concern and the 2nd petitioner is the proprietor thereof. The 1st petitioner is a manufacturer of electronic goods and manufactures, among other things, hearing aids. It possesses import licences as evidenced by Annexures R, R 1 and R 2. There is no dispute about these licences. The petitioners imported 25 thousand pieces of what is known as "Reed Switches" in two lots on or about 23-11-1978 for being used in the Hearing Aids manufactured by them. The Hearing Aid manufactured by the petitioners is sold in the market under the brand name of ''Rionet''.

2. The petitioners received a call memo dated 23-11-1978 from the Superintendent of Customs, Bangalore, In response to the Call Memo the petitioners produced the import licences and other documents. It is to be noticed that by notification No. 114 Cus. dated 1-7-1977 the Central Government has exempted component parts imported solely for the manufacture of Hearing Aids under Tariff No. 90-49-of the first schedule to the Customs Tariff Act from so much of that portion of the customs duty leviable thereon which is specified in the said tariff as is in excess of 10 percent ad valorem. In other words, the duty payable on the imported components of the Hearing Aid is limited to 15 per cent subject to the conditions, stipulated in the aforementioned Central Government notification. The petitioners claim the benefit of the concessional rate of import duty,

 

3. However, the petitioners received a show cause notice under S. 124 of the Customs Act, 1962 (hereinafter referred to as ''the Act''), calling upon them to show cause as to why the goods in question should not be confiscated for contravening Clauses (d) and (m) of S. 111 of the Act in as much as the Reed Switches in question were not component parts of a Hearing Aid, and the said switches were not suitable for use in Hearing Aid. The show cause notice has been issued by the 3rd respondent Assistant Controller of Customs, Customs Division, Postal Appraising Department, Foreign Post, Bangalore-52. The petitioners by their reply dated 6 12-1980 showed cause stating that though it was true that such miniaturised Reed Switches were not presently used in Hearing Aids, it was possible to use those switches in the hearing aids and that is what they had devised. They further contended that the use of such switches would enable the deaf to listen to the telephone communications without any difficulty. They also contended that the disadvantages by use of ordinary switches were avoided by using the Reed Switches (miniatures). In the reply to the show cause notice, the petitioners also asked for a personal hearing and an opportunity to demonstrate the working model of a Hearing Aid manufactured by them using Reed Switches. It is significant to notice here that the show cause notice had been issued by , the 3rd, respondent after he had collected some information from different sources regarding the use of Reed Switches in Hearing Aid. That information, by way of opinions, was to the effect, substantially, that Reed Switches were not component parts of a Hearing Aid. The petitioners took exception to the obtaining of information behind their back. However, the petitioners were given a personal hearing as well as an opportunity to demonstrate, in the presence of an expert, the Hearing Aid manufactured by them with Reed Switch. The Expert, one Mr. Y. Gopala Rao from Bharat Electronics Ltd., Bangalore, in whose presence the hearing aid was demonstrated was also subjected to cross examination by the counsel for the petitioners, Thereafterwards, arguments were heard on behalf of the petitioners and an order came to be passed by the 2nd respondent having regard to the value of the imported Switches being in excess of'' Rs. 25,000 on 14-10-1981. By that order, the Reed Switches imported by the petitioners were directed to be confiscated for contravening S. 111(d) and (m) of the Act. The order further gave the option to the petitioners to redeem the switches directed to be confiscated on payment of a fine of Rs. 1,25,000 and on payment of import duty without any concession. The 2nd respondent further imposed a penalty of Rs. 1,00,000 on the petitioners as a personal penalty under S. 112 of the Act. Aggrieved by the same, the petitioners have approached this Court under Art. 226 of the Constitution of India, inter-alia contending that the 2nd and 3rd respondents had acted in excess of their jurisdiction and bad in fact assumed jurisdiction where none existed in issuing the show cause notice dated 28-8-1980 (Annexure-F to the petition) culminating in the order of the 2nd respondent now impugned in this writ petition.

4. It is further contended that the finding recorded by the 2nd respondent that

 

the Reed Switches were not suitable to be used as components of a Hearing Aid is a perverse finding not warranted by any cogent material available to the 2nd respondent. It is also further asserted that the finding is vitiated inasmuch as the same was based on the material obtained behind the back of the petitioners without submitting the persons who gave these opinions to cross-examination by the petitioners or their counsel. It is therefore contended that there has been violation of the principles of natural justice. The petitioners have prayed for the reasons staled that the impugned order at Annexure-Q is liable to be quashed.

5. The respondents have entered appearance through counsel and filed their objections. The primary objection has been raised as to the maintainability of the writ petition without exhausting the various statutory remedies provided under the Act. It is contended for the respondents that the question involved is one essentially of determining facts and therefore, the adjudicating authorities under the Statute should have necessarily the right to determine whether the switches in question are component parts of the Hearing Aid. In other words, the stand taken is to support the reasoning adopted by the 2nd respondent in the course of his order to arrive at the finding that Reed Switches were not suitable for use as components of the Hearing Aids. In other respects, there is no dispute regarding the averments made in the petition.

6. Sri Shivashankar Bhat, learned counsel appearing for the respondents has fairly submitted that the opinions obtained from the Deputy General Manager, Professional Tubes, the Director, All India Institute of Speech and Hearing, Mysore and the Joint Director, Government of India, Department of Electronics, New Delhi, were furnished to the petitioner along with the show cause notice. Those people were however not subjected to any cross examination by the petitioner and there was no demand by the petitioners for such cross examination.

7. It is now useful to state more precisely the type of switches which were imported by the petitioners. According to the manufacturers Lekharaj Jassumal and Sons, the switches are those switches which will be used for telecommunication as evidenced by Annexure B to the petition. The manufacturers also stated that the self latching Reed Switch is unique and ideal for use in Hearing Aid. Reed Switches are manufactured in different sizes and to different specifications and we are only concerned with what is known as ''Memoried FTR-A''. In fact, in respect of this type of switch, the Joint Director of Electronics, Government of India, Department of Electronics, New Delhi, wrote as follows:

"This is a self latching mick-reed switch. These are not used in the Hearing Aids for the Deaf. Special telephone instruments for the Deaf are not made in India by any Company. In addition, the manufacture of telecommunication instrument is reserved for public sector. In view of this, you may take the appropriate decision in the matter."

 

Similarly, the Director Incharge of All India Institute of Speech, Mysore, has stated as follows:

"1) The Hearing Aid does not require any Reed Switch. It uses only a Wafer Switch for Microphone Coil.

"2) Most of the Hearing Aids use only one cell of 1-5V. The specifications of the Reed Switches mentioned in the letter works at a high voltage and current ratings. These values are very high compared to the operating voltage of a Hearing Aid.

3) At present, BEL, Bangalore, are producing Reed Switches of different types. So, further information regarding specifications can be had from BEL, Bangalore. These switches cannot be used in Hearing Aids."

The Deputy General Manager, Professional Tubes also opined as follows:

"1) The writing of Reed Relay in the Hearing Aid does not tally with the diagram. In fact it is short circuited by the wiring and hence serves no purpose.

2) The connection for switch SW 3 (ON/OFF) for the Reed Relay Coil circuit shown in the diagram is wrong, as the coil does not get energising voltage in either position of the switch.

3) On testing of the prototype hearing aid it is found that removal of Reed Relay connection had no effect on the operation of the Hearing Aid".

Similarly, Mr. Y. Gopala Rao, who was subjected to cross examination by the petitioners has, as can be seen from the. answers given by him, was evasive to commit himself one way or the other. The trend of his answers is that the type of switch proposed to be used by the petitioners need not be used, as a Wafer Switch is more than adequate for Hearing Aid. In the impugned order, as can be seen from paragraph 12 2, the 2nd respondent has not utilised the opinion given by Mr. Gopala Rao at the time of enquiry.

8. It has been argued for the petitioners by Sri Raghavan, learned counsel, that the switches in question were clearly permissible to be imported having regard to the plain language of item No. 19, Appendix 38 of the Import Policy relating to the year 1976-77 and 1977 78. In fact Annexure-T is an extract of item No. 19 aforementioned and it is as follows:

"(viii) Hearing Aids.

19) Applications from existing SSI units manufacturing hearing aids who were granted import licence in April 1975, March 1976 or April 1976, March 1977 will be considered for actual user licences for import of components/materials required for hearing aids.

Import licences will be issued for the production of hearing aids during twelve months from 1st April 1976 to 31st March 1977 increased by 100% thereof for expansion subject to the maximum of approved capacity.

 

Import licnces will be issued for the value calculated at pack value of Rs. 50. c.i.f. per hearing aid based on the actual production of hearing aids during twelve months from 1st April 1976 to 31st March 1977 increased by 100% thereof for expansion subject to the maximum of approved capacity.

The import licence will be valid for the import of the following components/ materials only subject to the value limited indicated therein:

1) Hearing Aid earphones and parts thereof.

2) Desk wired earphones/headphones and parts thereof for group equipment for classes in schools for the deaf.

3) Hearing Aid Microphones (or parte thereof).

4) Bone Conductors.

5) Headbands.

6) Earmoulds and earmould attachments.

7) Eartips, special tubing for eartip.

8) Following items each up to 25 per cent or face value:

a) Switches and parts thereof (Miniaturised).

b) Volume controls and parts thereof (miniatured or slide or without switches).

c) Potentioners for AVCor peak clipping both or parts thereof (miniaturised).

d) Tantalum capicitors with solid electrolytic exploy single ended leads".

He has drawn the Court''s attention to item 8 (a) which refers to Switches and parts thereof. It is argued that ho prohibition is imposed on the type of switches which the manufacturer imports and which is required for use in a hearing aid. On the plain language of the same it is so. The switches are referred toin the most general terms except that it is stated to be miniaturised switches. I am unable to see how the 2nd respondent can embark upon an investigation as to whether those switches were required to be used or some other type of switches were required to be used in a hearing aid. Having regard to the scheme and purpose of the Act, the officers appointed under the Act should give effect to the provisions of the Act and are not required to perform the duties outside the scope of the Act. The scheme of the Act is to regulate the import of goods into the country as well as the export of the same outside the country. Essentially it is preventive in character in as much as the unauthorised imports are prohibited. It also serves the purpose of raising revenue and to that extent it should be construed as a fiscal Statute. To sub-serve this end, the Officers entrusted with the responsibility of carrying out the purpose of the Act are required no doubt to clearly examine what is permissible under the Import Policy for the relevant year. But in that guise they should not assume the functions of some other authority like either controlling the standard of the manufactured goods in this country or attempt to decide the standard of goods which are to be manufactured by the private sector.

9. In the instant case, it is not argued that the petitioners are not authorised to manufacture hearing aids. Therefore it is not open to the 2nd respondent or other officers of the Customs Department to determine what kind of miniaturised switches they should use as a component in the hearing aid. It is also not in dispute that the hearing aid requires a switch. The dispute appears to be only in regard to whether a Wafer Switch is sufficient and therefore, Reed Type self latching switches are not essential for hearing aid. As is seen from the reply given by the petitioners to the show cause notice, at the very outset they have pointed out that reed switches are being tried out by them as an experimental measure and those switches have not been used in hearing aids before. They have also pointed out that reed switches have certain advantages for deaf people using telephones and therefore, they propose to use them in their hearing aids. Normally, a switch as commonly accepted performs the function of breaking and connecting circuits and no more. There are types of switches including the miniaturised switches to be used in a small instrument like the hearing aid. Each manufacturer has his own specifications and would produce goods of quality which are to be accepted by the public. If by using a particular type of switch if he is going to improve the performance of his product, I do not see how the Customs Authorities can come in his way. From the language of item No. 19 of the Import Policy as aforementioned, it is clear the actual user has full freedom to choose the components for import. There are no restrictions placed on the type of components which are required to be imported and used for manufacture of bearing aid except what is stated. When that is so, on the doubtful opinions gathered, the 2nd respondent cannot impose such restrictons. To my mind that is what appears to have been done. It is useful to set out portions of paragraph 12-2, of the impugned order which are as follows:

"........I have also gone through the expert opinion given by All India Institute of Speech and Hearing, vide letter No. SH/Elec/79-80. dated 27-12-79, which confirms that the Hearing Aids do not require any Reed Switches; that it uses only a Wafer Switch for Microphone and telephone coil; that they have also confirmed that most of the Hearing Aids use only one cell of 1.5 volts: that the specification of Reed Switches in question works at a very high voltage and current ratings and these values are very high compared to the operating voltage of a Hearing Aid........."

One fails to understand how this can lead to the Inference that Reed Switches are not to be used in Hearing Aid. It is possible that majority of the manufacturers use the ordinary type of switches and some body may have adopted the use of Reed Switches to improve the performance. Even that question should be left to the discretion of the manufacturer as he is the one who is likely to suffer or benefit by the use of a new type of switches. Similarly, the

Joint Director, Government of India'' Electronics Department. New Delhi has merely made a categorical assertion that Reed Switch cannot be used in a Hearing Aid. On the other hand, the demonstration given by the petitioners before the 2nd respondent clearly establishes that Reed Switches of the type in question can be used and to some of advantage as can be made out by the answers given by Mr. Oopala Rao of Bharat Electronics Limited. It is seen from the same paragraph of the impugned order that the opinion of the Deputy General Manager, Professional Tubes, BEL, Bangalore, has weighed much with the 2nd respondent. But as pointed out, except Mr. Gopala Rao nobody else was cross examined by the petiioners.

10. Sri Shivashankar Bhat, learned counsel for the respondents has strenuously argued pointing out the admission made by the petitioners themselve in their reply to the show cause notice. The admission Is tothe effect that so far Reed Switches have not been used in the manufacture of hearing aids in India. Therefore, he justifies the conclusion that there cannot be a component like Reed Switch to a Hearing Aid manufactured in India. The distinction lies only in whether it is a component or whether it need not be a component. As commonly understood, the components put together convert themselves into a form of finished end product of soma utility. The products may vary from an automobile to a hearing aid. It is possible to have a car with two carburettors and also a car with one carburettor. If carburettors were permitted to be imported, it cannot be said that a manufacture of a car which is designed for two carburettors, cannot import two carburettors because one carburettor is adequate. This appears to be the line of reasoning advanced by the 2nd respondent It is not disputed that a bearing aid requires a switch but the question is only as to which type of switch should be used. I have already stated that it is not for the officers under the Act to decide what the manufacturing components should be. Therefore, I have no hesitation to come to the conclusion that 2nd respondent''s reasoning is perverse in arriving at the conclusion that Reed self latching switches are not components of a hearing aid.

11. Then the contention urged by the respondents is that this Court should not under Art. 226 of the Constitution of India interfere and give relief as the petitioners have not exhausted all the remedies under the Act. Now it is well settled that when the matter goes to the very root of the question of jurisdiction, the High Court can and does interfere. The show cause notice apparently has been issued for violation of the provisions contained in clauses (d) and (m) of S. 111 of the Act. S. 111 (d) and (m) read as follows:

"111. The following goods brought from a place outside India shall be liable to confiscation:

(d) any goods which are imported or attempted to be imported or are brought within the Indian Customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;........

 

(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under S. 77 in respect thereof;"

From the language of the above two sub-sections of S. 111 of the Act, it is clear that what is contemplated is the confiscation of the goods imported or attempted to be imported or brought within the Indian Customs waters for the purpose of being imported contrary to any prohibition imposed by or under the Act or any other law for the time being in force and the goods which do not correspond in respect of value or any other particular with the entry made under the Act or in the case of baggage with the declaration made under S. 77 in respect thereof.

12. It is clear that the miniaturised switches are components of hearing aid as is apparent from the language of item No. 19 of the Import Policy of the Government for the relevant years, under Appendix 38. As already pointed out, there is no express prohibition for the import of miniaturised switches. Therefore, S. 111 is not attracted. Nor is it the case of the respondents that there has been either any violation or misdescription of the goods. Therefore, even the provisions contained in subclauses (d) and (m) of S. 111 of the Act are not attracted.

13. Mr. Shivashankar Bhat, learned counsel for the respondents, has not been able to point out under which of the provisions contained in S. 11 of the Act the present import falls as prohibited by law.

14. In the result, I am of the view the facts themselves do not exist to attract the provisions of S. 111 of the Act for the purpose of confiscation. Therefore, the entire proceedings started with the show cause notice and culminating in the impugned order is without jurisdiction and as such this Court can and ought to - interfere with the impugned order.

15. In the reslut, the impugned order is set aside. Consequently, a direction should necessarily issue that the 2nd and 3rd respondents shall cause the Reed self-latching switches in question, 25,000 in number to be released in favour of the petitioners on their paying duty in accordance with law including such benefits to which they are entitled to under Notification No. 114-Cus dated 1-7-1977 of the Government of India giving them the benefit of concessional rate of duty for the purpose of manufacturing Hearing Aids. I must point out, the apprehension expressed at the stage of arguments that these switches may be mis-used by the petitioners. It should only be stated, there is adequate provision in the Act to deal with such a contingency as the authorities are not helpless to take action against the imported goods as an actual user and actually not used it.

16. Rule accordingly is made absolute. There will be no order as to costs.

 