
(1981) 08 BOM CK 0035

In the Bombay High Court

Case No : Miscellaneous Petition No. 1787 of 1977

Madhu Wool Spinning Mills

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 21-08-1981

Acts Referred:

Customs Act, 1962 — Section 124, 160, 19, 25

Citation : (1989) 25 ECR 531 : (1983) 14 ELT 2200

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

Bench : Single Bench

Judgement

1. The petitioners are a firm carrying on business of manufacturing shoddy woollen yarn. The petitioners own a shoddy woollen Mill wherein they utilise the imported woollen rags for the purpose of manufacturing woollen yarn and blankets. The Government of India has permitted the import of mutilated woollen rags to be utilised by the consumer shoddy mills. There are two types of woollen rags, garment rags i.e. rags from woven woollen fabrics and hosiery rags i.e. rags from knitted woollen material. The Government of India in exercise of the powers conferred by Section 25 read with sub-section (3) of Section 160 of the Customs Act, 1962, published a Notification dated April 20, 1966 exempting woollen waste and woollen rags, when imported into India, from the whole of the portion of the duty of customs leviable thereon which is specified in the First Schedule to the Indian Tariff Act, 1934. The importers of woollen rags have to claim the said exemption under Item 49(4) of the Indian Customs, Tariff read with the Notification before the clearance of the consignment of woollen rags from the Customs.

2. Since the year 1966, the State Trading Corporation of India has been given exclusive monopoly in licences for importing woollen rags from outside India. The import licences are not granted to the shoddy woollen mills individually. The importers apply to the Textile Commissioner for allocation of quota of woollen rags and on the recommendation of the Commissioner, the S.T.C. gives allocation

of the import woollen rags to various consumers. The procedure adopted by the S.T.C. in regard to the import of raw materials was to invite local tenders from foreign suppliers for the import of old and used garments, mutilated or unmutilated. The S.T.C. publishes a list of foreign suppliers and the importers are required to choose the suppliers. The importers are thereafter required to establish a local letter of credit in favour of the S.T.C. as per the value of allocation made. After such letter of credit is established, the S.T.C. establishes a letter of credit and other relevant aspects of the importation, as woollen rags are handled by the S.T.C. exclusively. After the woollen rags are imported and the goods arrived in the Port of Bombay, the S.T.C. issues letter of authority to the consuming importers for clearance. The importers lodge chipping document and the goods are cleared from the Docks after the Customs authorities verify that the goods are according to the import licence.

3. The petitioners were allotted quota of 37 bales of woollen hosiery rags and the goods imported from the foreign suppliers by the S.T.C. reached Bombay Port on December 12, 1974. The Customs authorities carried out the first visual inspection on January 6, 1975 and for this inspection samples were taken out from the two bales bearing Nos. 12 and 34. The inspection led to the conclusion that the wool content in samples from Bale No. 12 was 64 per cent, while in bale No. 34, 60 per cent. The Customs authorities decided to have a chemical test on January 18, 1975 and five pieces of samples from each of the bale Nos. 12 and 34 were selected. From the chemical examination it was found that the wool content in bale No. 12 was 66.88 per cent while in bale No. 34 it was 40 per cent. In spite of these two tests the Customs authorities decided on May 23, 1975, to resort to the core-drilling test. In regard to this test bale No. 19 was selected and the result of the test was that the wool content of that bale was only 26 per cent.

4. The Assistant Collector of Customs, Bombay, served a show cause notice on the petitioners in exercise of the powers u/s 124 of the Customs Act, to explain why entire goods of 37 bales should not be confiscated and in the event of the release of the goods, with or without fine, duty as leviable on the goods and calculated in accordance with the provisions of Section 19 of the Customs Act should not be collected. The show cause notice also calls upon the petitioners as to why a personal penalty should not be imposed under the provisions of the Customs Act. The basis of the notice was that the wool content of the 37 bales imported was less than 50 per cent and therefore the import contravened the provisions of the Customs Act and the exemption granted by the Notification dated April 20, 1966 was not available to the petitioners. The petitioners sent a reply on May 24, 1975 and also addressed some more letters explaining the position in detail. The petitioners claimed that the import of 37 bales was exclusively under the supervision of the S.T.C. and the petitioners had no control either over the suppliers or the goods imported. The petitioners also pointed out that in the first two tests carried out by the Customs authorities, it was found that the wool content was more than 50 per cent and it was difficult to

understand why the third test was resorted to and that too only in respect of bale No. 19. The petitioners also pointed out that the requirement that the woollen rags should contain wool of 50 per cent is not provided in the exemption notification and it was wrong for the Customs authorities to rely upon some trade advice given by the Government. The Deputy Collector of Customs, Bombay, by his order dated November 22, 1976 held that the core-drilling sample showed the wool content to be only 26 per cent and as the consignment cannot satisfy the minimum of 50 per cent wool content, the petitioners are not entitled to claim exemption under the Notification. The Deputy Collector thereupon directed that the imported goods may be allowed clearance against the licence for woollen rags but the goods shall be charged to the appropriate duty. The petitioners carried an appeal before the Appellate Collector of Customs, Bombay, but the appeal ended in dismissal by an order dated October 24, 1977. The Appellate Collector held that the arguments raised in the appeal are the same as those raised before the Deputy Collector and the Deputy Collector has adequately dealt with each of the arguments and it is not necessary to disturb the order of the Deputy Collector in appeal. The petitioners have thereafter approached this Court in exercise of jurisdiction under Article 226 of the Constitution of India by filing the present petition on December 12, 1977.

5. The petitioners have joined the Union of India as respondent No. 1, the Appellate Collector as respondent No. 2 and Board of Trustees of the Port of Bombay as respondent No. 3. Respondent No. 3 is joined as party respondent to the petition because the imported goods are lying in the sheds of the Port Trust of Bombay and the Port Trust is not permitting clearance of the goods without payment of demurrage charges. The relief prayed in the petition is for quashing the orders of the Deputy Collector and the Appellate Authority and for directing respondent Nos. 1 and 2 to issue detention certificate in respect of import of woollen rags. The petitioners have also claimed that respondent No. 3 should not charge any demurrage charges to the petitioners, or in the alternative the charges should be computed with reference to entry 85 of Notified Scale of Rates and not under entry 92.

6. In answer to the petition, Shri Maruti Purushottam Gaoskar, the Officer of the first respondent has filed a return sworn on August 21, 1981, while on behalf of respondent No. 3, the return is sworn by Shri Vithal Vaman Nadkarni, the Deputy Docks Manager and the Principal Officer of the board of Trustees. The respondent Nos. 1 and 2 claim by their return that as the wool content of the imported rags was found to be below 50 per cent the petitioners are not entitled to the exemption from payment of duty and the order under challenge is correct in law. Respondent No. 3 claims that the petitioners are liable to pay the demurrage charges and the grant of detention certificate would give the petitioners total exemption from demurrage charges only for the period when the goods were detained for analytical or technical test.

7. Shri Cama, the learned counsel appearing in support of the petition, submitted

that the impugned order suffers from serious infirmity as the respondents have proceeded to levy the duty on the imported woollen rags on the ground that the wool content was less than 50 per cent. It was urged by the learned counsel that the Exemption Notification nowhere provides that the imported rags should contain 50 per cent wool and in absence thereof it is not permissible for the authorities to rely upon some trade advice to claim duty on such rags. The learned counsel also complained that the orders of the two authorities below do not indicate any sound reason for discarding the first two tests which resulted into the finding that the wool content was more than 50 per cent and equally there is no sound reason as to why the result of the third test was blindly accepted as correct and that too for all the 37 bales. In my judgment, the submission made by Shri Cama on the question of payment of customs duty deserves to be accepted. The Exemption Notification dated April 20, 1966 totally exempted woollen wastes and woollen rags from the whole of the duty of customs leviable thereon. The Exemption Notification does not restrict the advantage only to those woollen wastes and woollen rags containing wool of more than 50 per cent. In absence of any such provision in the Notification, it is not permissible for the Customs authorities to levy duty on the imported woollen rags on the ground that the wool content was found less than 50 per cent. It is now well settled that the trade advice issued by the Government of India has no statutory force and it is not permissible for the Authorities exercising quasi-judicial function to place reliance upon such trade advice to hold that the petitioners are liable for payment of duty. An identical question arose for consideration before this Court and by Judgment delivered on January 15, 1975 in Miscellaneous Petition No. 92 of 1974 *M/s. Nagesh Hosiery Mills v. M. R. Ramchandran & Anr.*, a Single Judge of this Court held that it is not permissible for the Authorities to rely upon the trade advice and levy duty on the woollen rags on the ground that the wool content was not according to the advice. I am in respectful agreement with the conclusion reached by the learned Single Judge and in my judgment it was not permissible for the Authorities below to base its conclusion on a trade advice and hold that as wool content was less than 50 per cent the advantage of the Exemption Notification was not available to the petitioners.

8. Even assuming that the authorities below were justified in relying upon the trade advice and concluding that the petitioners are liable to duty because the wool content was less than 50 per cent, in my judgment, on the set of facts available in the present case the finding of the authorities below that the wool content was less than 50 per cent was totally perverse. The facts set out hereinabove would clearly establish that in the two tests carried out by the Customs authorities, the content of samples drawn from bale Nos. 12 and 34 were found to contain more than 50 per cent of wool. It is difficult to appreciate why the Customs authorities resorted to carry out the third core-drilling test. Shri Dalal, appearing on behalf of the Department, invited my attention to the letter dated May 23, 1975 addressed by the Assistant Collector to the petitioners.

This letter mentions that the sampling by core-drill method was resorted to as the results of physical examination were found to be conflicting. The letter overlooks that apart from the physical test the Authorities have carried out the chemical test and in both those tests the wool content was found to be more than 50 per cent. The Deputy Collector, in his order observes that the samples showed different findings in respect of wool content on the basis of different analysis and therefore, it is not possible to rely on the analysis of samples. The Deputy Collector found this convenient method to ignore the physical test and the chemical test carried out by the authorities on the earlier occasion. The Deputy Collector accepted the finding of the core-drilling test as absolutely correct and proceeded to hold that the entire consignment is not available to exemption because the contents of wool was less than 50 per cent. In my judgment, the approach of the Deputy Collector was totally incorrect. Merely because the different analysis show different conclusions it is not permissible to select that conclusion which suits the authorities to levy the duty. The order of the Deputy Collector nowhere indicates that the first two tests carried out by the authorities were in any way defective in nature and the conclusion was not accurate. In my judgment, the Deputy Collector had chosen to rely upon the core-drilling test only because it assists the Customs authorities to levy the duty. Shri Dalal was unable to point out any reason as to why the conclusions recorded in the first two tests should have been discarded.

9. There is one more aspect of the matter which cannot be overlooked. The first two tests were carried out by drawing samples from bale Nos. 12 and 34, while the core-drilling was carried out on bale No. 19 only. Even assuming that the wool content of bale No. 19 was found to be below 50 per cent, still it is difficult to understand how the Customs authorities can jump to the conclusion that the wool content of all the remaining 36 bales including bale Nos. 12 and 34 were less than 50 per cent. The positive conclusion arrived at after inspecting Bale Nos. 12 and 34 was that the wool content was more than 40 per cent, but ignoring that conclusion the authorities resorted to levy duty by resort to the finding arrived at by core-drill test on bale No. 19. The procedure adopted by the Customs authorities was entirely misconceived and cannot be sustained either in law or by principles of natural justice. In my judgment, the finding of the Customs authorities that the import of woollen rags by the petitioners is not eligible for duty exemption is totally incorrect and deserves to be set aside. The petitioners are entitled to the clearance without payment of any duty.

10. Shri Cama then urges that the respondent No. 3 Port Trust Authorities are not entitled to charge any demurrage charges in respect of 37 bales of woollen rags which are detained by the authorities for want of payment of duty. The learned counsel submitted that the first inspection was carried out by the Customs authorities on January 6, 1975, while the core-drilling test was over by end of May 1975. It was urged that the detention of goods after that date was totally illegal and the petitioners should not be made liable to pay the demurrage charges for the entire period. Shri Cama claims that the respondents 1 and 2 are

bound to issue detention certificate to the petitioners for the detention of the goods for entire period and the Port Trust Authorities cannot claim any amount of demurrage charges because the goods were not detained for any fault or latches on that part of the petitioners. Shri Cama relies upon the Scale of Rates notified by the Port Trust Authorities and on a note which appears in Section 3 dealing with the rates on page 13 of the Scale of Rates Charged at the Docks. The Scale of Rates are approved by the Board of Trustees under Sections 48 to 51 of the Major Port Trusts Act, 1963 and are in force from 1st July, 1975. The relevant Rules reads a under :

"Goods detained by the Customs Department for special examination "involving analytical or technical tests other than ordinary processes of appraisement," will be exempt from demurrage fees during such period of detention as may be certified by the Collector of Customs to be not attributable to any fault or negligence on the part of importers or exporters plus two working days. Certification by the Customs will be given by endorsement on relative duplicate copies of Bills of Entry or Shipping Bills."

Shri Cama submits that in view of this Rule and on the finding that the goods were not detained because of any fault or negligence on the part of the petitioners, the demurrage charges should not be recovered from the petitioners. The submission is not correct. The rule on which reliance is placed provides for grant of detention certificate for the period when the goods are detained by the Customs Department for special examination. The submission of the learned counsel that the Rule covers not only the period when the goods are detained for special examination but also the period subsequent to that date and extending to the date when the goods are actually cleared cannot be accepted. The plain reading of the Rule makes it clear that exemption from payment of demurrage charges is available only during such period when the goods are detained for special examination. In the present case, the facts establish that the goods were detained by the Customs authorities till end of May 1975 for special examination and it is obvious that the petitioners would not be liable to pay the demurrage charges to the Port Trust authorities till end of May 1975. The respondents 1 and 2 are bound to issue the detention certificate to the petitioners for the period ending with May 1975.

11. The contention of Shri Cama that the petitioners are not liable to pay the demurrage charges for the period subsequent to May 1975 because the goods remained with the Port Trusts authorities due to the insistence of the Customs authorities for payment of duty and not for any fault or negligence of the petitioners cannot be accepted. Shri Chinoy, appearing on behalf of the Port Trust authorities, invited my attending to a decision of the Supreme Court reported in Board of Trustees of the Port of Bombay Vs. Indian Goods Supplying Co., The Supreme Court held that even though the delay in clearing the goods was not due to the negligence of the importers for which he could be held responsible, yet he cannot avoid the payment of demurrage as the rates imposed are under

the authority of law, the validity of which cannot be questioned. The claim cannot be resisted in absence of evidence that the delay was due to any act of the Port Trust or persons for whom the Port Trust is responsible. The decision clearly lays down that the demurrage charges due to the Port Trust authorities cannot be questioned by the petitioners even though the goods could not be cleared because of the insistence of the Customs authorities for payment of duty. Shri Cama complains that the Customs authorities were illegally demanding duty which was very high and as such the petitioners were prevented from clearing the goods earlier and therefore the liability of demurrage charges cannot be foisted on the petitioners. It is true, as found by me hereinabove, that the Customs authorities were in error in claiming duty on the imported woollen rags although the petitioners were entitled to the advantage of the Exemption Notification, but that fact itself is not sufficient to hold that the petitioners can clear the goods without payment of demurrage charges. It is open for the petitioners to pay the demurrage charges due after May 1975 and then claim the same from the Customs authorities in appropriate proceedings. The petitioners have not sought any relief against the Customs authorities in that connection in the present petition and as such the request of Shri Cama that the Customs authorities should be ordered to pay the demurrage charges cannot be accepted. The petitioners are entitled to the detention certificate from the Customs authorities only till end of May 1975. The reliance by Shri Chinoy in this connection on Ex. 4, a letter dated January 4, 1977 addressed by the petitioners and on averments in para 22(e) of the petition is very appropriate. The contents show that petitioners were fully aware of their liability to pay demurrage charges and their grievance in the petition is totally unfounded.

12. Shri Cama then submits that even assuming that the petitioners are liable to pay the demurrage charges, the Port Trust authorities were clearly wrong in demanding the charges as per the rates mentioned in Item No. 92 of the Scale of Rates notified. Item No. 92 is in a way residuary item and provides for unspecified items - Non-heavy lifts each package weighing less than 1.1/2 tonnes and the rate is Rs. 16/- per tonne per day. Shri Cama complains that the Port Trust authorities should have computed the demurrage charges by calculating the rate provided under item No. 85. Item No. 85 covers "textiles, cotton, silk, woollen and synthetic" and the rate is Rs. 5/- per tonne per day. It was urged that the expression "textile" in Item No. 85 would also include "woollen rags" and in support of this contention reliance is placed on the expression of definition of "woollen rags" given in a public notice dated August 8, 1974 issued by the Chief Controller of Imports and Exports. In this note, the woollen rags are defined as under :

"WOOLLEN RAGS : (a) New - Waste Woollen cloth whether woven or knitted which is left after a garment had been cut out including genuine tailor cuttings, piece ends, discarded pattern bunches and sample bits.

(b) Old - Rags of woollen textile fabrics (including knitted and crocheted fabrics),

which are required for manufacture of shoddy yarn and may consist of articles of furnishing or clothing or other clothing so worn out, soiled or torn as to be beyond cleaning or repair. In case serviceable garments have been imported they will have to be mutilated before release by Customs authorities."

It is urged that the expression "woollen rags (old)" covers rags of woollen textile fabrics and therefore the woollen rags imported by the petitioners would squarely fall in the expression "textiles" given in Item No. 85 of the Scales of Rates. An identical contention was urged before me in a companion petition being Miscellaneous Petition No. 1572 of 1977 Jagmohandas Kuberdas Kataria v. Union of India and Others decided by me on August 18, 1981, and I have recorded a finding that the woollen rags would not fall under the expression "textile" in Item No. 85. Shri Cama reiterated the contentions raised at the hearing of that petition and also relied upon the decision of the Division Bench of this Court in 1977 39 S T C 386 = 1978 ELT 646 Punjab Business & Supply Co. Pvt. Ltd. v. State of Maharashtra. For the reasons recorded in that judgment, it is not possible to accept the submission of the learned counsel. The Division Bench was considering the definition of the term "cotton fabric" given in Item No. 12 of the First Schedule to the Central Excises and Salt Act, 1944, and held that the rags and Chindhis are covered by the definition. The Division Bench observed that merely because cloth is sold in pieces and not in the form of Tagas or bales manufactured by the Mills, it does not cease to be manufactured cloth or cotton fabrics. Therefore, although rags and Chindhis are pieces of cloth of regular shapes and sizes, it cannot be said that they are not manufactured cloth. In the present case, the question which arises is whether the expression "textile" in Item No. 85 of the Scales of Rates would cover the woollen rags. In my judgment, it would not be possible to hold so. What was contemplated by Item No. 85 was textile or fabrics in its pure form and not the woollen rags.

13. Reliance by Shri Chinoy in this connection on the decision of the Division Bench of the Mysore High Court in the case of H. Anjanappa & Son v. Commissioner of Commercial Taxes in Mysore, Bangalore reported in 1970 26 S T C 139 is very appropriate. The Division Bench was considering the ambit of Entry 8-A of the Fifth Schedule of the Mysore Sales Tax Act, 1957, and observed that worn out and torn old clothing pieces purchased through hawkers from the public and then sold for the manufacture of paper are not textiles exempted from the Sales Tax Act. The Division Bench observed that if old and worn out wearing apparel are purchased, they do not revert to the category of textiles, but they retain the character of wearing apparel liable to sales tax. Shri Chinoy also submitted that in the present case what was imported was woollen rags of hosiery and by no stretch of imagination hosiery can be equated to the textile. In my judgment, the submission is correct and deserves acceptance. In my judgment, the petitioners are liable to pay the demurrage charges computed by the Port Trust authorities according to the rates provided by Item No. 92 of the Scale of Rates. Shri Chinoy pointed out Resolution No. 4.10 passed by the Trustees of the Port Trust and stated that the petitioners would be entitled to

some deductions. The Port Trust authorities would compute the demurrage charges as per the Resolution No. 4.10 for the period commencing from June 1, 1975 onwards. The petitioners would be liable to pay that amount only towards the demurrage charges.

Accordingly, it is found that the petitioners are not liable to pay Customs duty and are entitled to the detention certificate in respect of 37 bales of woollen rags for the period ending with May 31, 1975. The petitioners would be liable to pay the demurrage charges for the period commencing from June 1, 1975 till the goods are cleared. The Port Trust authorities shall not sale or dispose of the goods for the period of four months from to-day to enable the petitioners to clear the same after payment do demurrage charges. In case the goods are not cleared by that period, it is open for the Port Trust authorities to adopt any appropriate proceedings to recover its charges. The rule is made absolute accordingly.

hardly requires to be stated that the orders annexed as Exhs. E and F are quashed.

the circumstances of the case, there will be not order as to costs.