

(2003) 09 BOM CK 0116

In the Bombay High Court

Case No : Writ Petition No. 1112 of 1991

Nitco Tiles P. Ltd. and Another

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 23-09-2003

Acts Referred:

Citation : (2004) 112 ECR 513

Hon'ble Judges : V.C. Daga, J;J.P. Devadhar, J

Bench : Division Bench

Final Decision : Allowed

Judgement

V.C. Daga, J.—Heard learned Counsel for the petitioners. None for the respondents.

2. The petitioner No. 1 is a Company incorporated under Companies Act, 1956, having its registered office at Bombay, whereas the petitioner No. 2 is one of the Directors of the petitioner No. 1, Company.

3. The petitioner No. 1, Company holds Small Scale Industries Registration licence issued by the Directorate of Small Scale Industries. Petitioner No. 2 is a regular importer of marble/granite and other materials.

4. The petitioners seek to challenge the action of the respondents in insisting a valid import licence for allowing clearance of the goods covered by the Bill of Entry in question.

5. The petitioners contend that as per the Import Policy AM-78, the manufacturer-exporters, who had exported goods to Vietnam as per policy operating during the period April 77/March 1978 and who had their export contracts falling into the scheme of Export Entitlement Certificate, were granted specific Transferable Replenishment licences for import of raw materials, components, consumable stores and packing material as per para 30(1) of the Import Policy AM-78. The said licences were freely transferable.

6. The petitioners claimed to be the actual users of marble/granite and manufacture of marbles, marble slabs/granite and tiles. The petitioners had imported marbles/granite in the past which were allowed to be cleared by the Customs, Bombay without any objection.

7. Prior to the imports, in question that petitioners got transferred in their favour, an Import Licence dated 26th September, 1989, which was originally in the name of one M/s. Braithwite and Company Limited, Calcutta. The said licence permitted import of raw materials, components etc. in terms of para 30(1) of the Import Policy Am-78 worth c.i.f. value of Rs. 8,32,900/-.

8. The petitioners contend that the foreign suppliers, M/s. Vilaka (U.K.) Ltd. despatched 997 square meters of Rough Granite/Marbles Slabs under their Invoice No. VK/342/91 dated 10th February, 1991. The said goods arrived at Bombay Port, by Sea Vessel s.s. CMB Merker from LA Spezia Port (Italy), the petitioners filed a Bill of Entry bearing Import Deptt. No. 1154 dated 26th February, 1991. When the aforesaid goods arrived at a Bombay Port, the petitioners filed two Bill of Entries and sought clearance of the goods under the licence which was obtained by the petitioners from one M/s. Braithwite and Company Limited, Calcutta as stated hereinabove. The petitioners relying on the judgment of learned Single Judge of this Court in the case of Nck Sons Exports Private Limited Vs. Union of India, sought clearance of the goods contending that the petitioners were entitled to import marble slabs under the licence obtained by them, being the transferee of licence in question.

9. When the clearance of the goods was not allowed by the customs, petitioners filed the present petition questioning the legality and validity of the impugned action of the respondents refusing clear goods and prayed for interim relief in terms of prayer Clause (c). This Court vide order dated 5.4.1991 was pleased to grant rule and interim relief in terms of prayer Clause (c) relying upon the judgment of this Court in the case of NCK Sons Exports Private Limited v. Union of India (cited supra) which held that the REP licence holder is entitled to import raw materials, components and other things for utilisation in his factory whether or not such articles were utilisable in the factory of the original licence holder. The learned Single Judge in the case of NCK Sons Exports Private Limited v. Union of India (cited supra) considered the clarification issued by the office of the Chief Controller of Imports and Exports vide letter dated 11th April, 1989 and went on to observe as under:

9 This naturally involves the interpretation of Paragraph 30 of the Import Trade Control Policy of 1977-1978. While proceeding to understand the said provision, it is necessary to mention that REP licences are freely transferable. Paragraph 29 of the above mentioned Import Policy recognizes that such licences are freely transferable because it specifically mentions that REP licences issued to different categories of exporters and their transferees will be valid for import of raw materials, components, packing materials and consumable stores as laid down in the Policy.

10. Paragraph 30, in so far as is material for the purpose of disposing of this petition, reads as follows:

30. (1) If a manufacture exporter obtains the REP licence in his own name against his own exports, the licence will be valid for import of any raw materials, components, consumable stores and packing materials required for use in the licence-holder's factory. The licensee shall be subject to "Actual User" condition.

11. From a bare reading of this provision, it is reasonable to infer that the holder of a REP licence can import raw materials and other things mentioned therein which are required for use in his own factory. However, it is not mentioned that the goods which he is allowed to import under the REP licence should have any relationship with goods which he has exported and in recognition of which exports he has been given REP licence. In other words, the person who obtains the REP licence might have exported a particular commodity and he will be entitled to import raw materials which may go into the manufacture of another commodity. Taking the present case itself, it is noticed that the party which originally obtained the REP licence had exported railway equipment. That did not restrict the right of the original party from importing raw materials, components, consumable spares, etc. required in the manufacture of some other commodity in the factory of the licence holder. This is in fact recognised by the office of the Chief Controller of Imports and Exports as can be seen from the extract of the communication dated 11th of April 1989 from that office to the Collector of Customs, Bombay, which has been reproduced by me above.

10. The perusal of the aforesaid paragraphs and dissection thereof would show that the learned Single Judge accepted the contention of the petitioners and went on to record findings that the transferee of the import licence can also import goods which the original licensee could not have imported.

11. At this juncture, it will not be out of place to mention that the licence condition reads as under:

This licence is valid for import of Raw materials components, consumable stores and packaging materials required for use in the licence Holders Factory in terms of Para 30(1) of the import Trade Control Policy (Vol.-II) of AM-78 subject to the conditions restrictions laid down therein and as per condition on reverse.

Perusal of the aforesaid licence condition unequivocally goes to show that the licence was valid for import of raw materials, components, consumable stores and packing materials required for use in the licence holders factory in terms of para 30(1) of the Import Trade Control Policy (Vol.-II) of AM-78, subject to the conditions laid down therein as well as on the conditions mentioned on the reverse of the licence. This endorsement on the licence does suggest that only raw materials which are required in the licence holder's factory can only be imported by the licence holder. As a matter of fact, reading of the aforesaid condition, though loosely worded, unequivocal indicates that what can be imported is the only required raw materials, components, consumable stores and

packaging material required for manufacture of the goods in factory; meaning thereby only goods required as raw material for manufacture in the factory of the licence holder can only be imported. However, learned Single Judge in the case of NCK Sons Exports Private Limited (supra) rule that the transferee of the licence can import even those goods which the originally licensee could not have imported.

12. We have carefully examined the view taken by the learned Single Judge but have our own reservation with regard to the correctness thereof. However, in the facts of the present case, the petitioners rightly contended that at the time when the imports were made the law laid down by the learned Single Judge of this Court in the case of NCK Sons Export Private Limited (supra) was holding the field and if imports were made as per the law prevailing at the time of import, in that event, they are entitled to succeed in the present petition; irrespective of the facts whether or not the view taken by the learned Single Judge in NCK Sons Export Private Limited (supra) is correct. We agree with the submission made by the petitioners that when the goods were imported by them, the judgment of the learned Single Judge, interpreting Clause 30(1) of the Import Trade Control Policy in the case of NCK Sons Exports Private Limited v. Union of India (cited supra) was very much in operation. As such import cannot be held to be illegal.

13. In the facts of the present case, for the reasons stated herein above, petitioner is entitled to succeed in this petition. In this backdrop, we do not propose to examine the correctness of view taken by the Single Judge in the case of NCK Sons Exports Private Limited v. Union of India (cited supra) and keep this issue open for being considered in a proper case.

14. With the above observations and considering the peculiar facts of the present case, for the reasons stated, we quash and set aside the impugned action of the respondents and allow this petition making the Rule absolute in terms of prayer Clause (a) with no order as to costs.