

(1984) 11 P&H CK 0029
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3502 of 1984

Oswal Wollen Mills Ltd. and Another	Vs	APPELLANT
Union of India and Others		RESPONDENT

Date of Decision : 12-11-1984

Acts Referred:

Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 111, 122, 129

Citation : AIR 1985 P&H 88 : (1985) 4 ECC 81

Hon'ble Judges : S.P. Goyal, J; I.S. Tiwana, J

Bench : Division Bench

Judgement

S.P. Goyal, J.—This petition under Art. 226 of the Constitution has been filed to challenge the order of the Joint Chief Controller of Imports and Exports dated August 8, 1984, debarring the petitioners, Messrs Oswal Wollen Mills, Limited, Ludhiana, (hereinafter called the Company) and their Directors from importing any goods and from receiving import licences / OCPs and allotment of imported goods through STC, MMTC and any other agency for a period of about five years from November 9, 1983 to March 31, 1988. The said order has also been made applicable to three sister concerns of the petitioner Company and its branches in which the names of its Directors appear as proprietors, partners or directors.

2. The Company is recognised as Export House within the meaning of the term appearing in the Import and Export Policies issued from time to time under the Imports (Control) Order, 1955. According to Clause 147 of the Import Policy AM 81 (April 1980 March 1981) registered Exporters including Export Houses were entitled to register their export contracts for the purpose of claiming benefits as detailed in its Appendix 20. During the period April 1980-March 81 the Company entered into several export contracts which were duly registered in the manner prescribed. In lieu thereof, the Company made several applications for REP Licences as permissible to registered exporters under the provisions of the aforesaid Import Policy which were duly issued on various dates as specified in Annexure P1. According to the petitioners, their licences were specifically

endorsed with the date of the export contract and were issued in accordance with the scheme for registration of export contracts under the said Policy-AM 81.

The petitioners were, therefore, entitled to import terms of import replenishment as were permissible on the date of the contract or to import such items as were permissible under the Import Policy applicable to registered exporters, i.e. the items placed on Open General Licence under the Import Policy in force on the date of the registration of the contract. Accordingly, the Company through the letter of authority issued to one Jayant Oil Mills (Private) Limited, Bombay and Messrs D. R. Dass and Company, Calcutta or by itself from time to time, imported inedible beef tallow which was an OGL item on the dates of registration of the export contracts and applied for clearance of the same at the ports of Calcutta and Bombay. The Collector of Customs, Calcutta, cleared the goods which were imported by the letter of authority under the Import Licences presented to him. However, the Collector of Customs, Bombay, in respect of the consignments imported at Bombay, confiscated the goods vide order dated August 19, 1983 and imposed a fine of Rs. 19,32,000/- in lieu of confiscation. His order was challenged by the Company in the Bombay High Court which was set aside vide judgment dated September 14, 1983 and the Company allowed to re-export the consignment.

3. The Deputy Chief Controller of Imports and Exports issued a notice dated April 10, 1984 to the Company to show cause as to why action should not be taken under Clause 8(i)(g) of the Imports (Control) Order for an unauthorised and illegal import of the beef tallow against REP Licences. After allowing two adjournments to the Company, the Joint Chief Controller of Imports and Exports passed an ex parte order on June 6, 1984 which was set aside by his Court and the case remanded for fresh decision after allowing the petitioners one more opportunity of hearing. The case was heard by respondent No. 3 on August 6, 1984 and the impugned order passed.

4. At the outset, the learned counsel for the petitioners, again impugned the order of respondent No. 3 on the ground that even after the remand no adequate opportunity of hearing was allowed inasmuch as the order of the Collector of Customs and the other relevant files were not made available for inspection. Having been satisfied on the merits of this contention, we offered the petitioners a fresh hearing by respondent No. 3 but their learned counsel made a prayer that the case may be decided finally on merits as in the given circumstances no impartial justice was likely to be meted out to them. Finding force in the submission we heard the case on merits.

5. In response to the show cause notice the Company pleaded that it had the right to import the beef tallow which was an OGL item during the period of relevant import policy which governed its rights and also challenged the competency of the authorities under the Imports (Control) Order to reopen the matter, the goods having been cleared by the Collector, Customs. So far as the right of the Company to import the beef tallow is concerned, the learned counsel

for the petitioners relied on paras 174 and 176 of the Import Policy. A combined reading of these two paras would show that the Export Houses were entitled to import any OGL item provided the licence was got endorsed as non-transferable. It is not necessary to discuss in detail the arguments addressed by the respective learned counsel for the parties on this matter because in the Import-Export Policy for the period April 1982 to March 1983 it was provided in para 231(3) that REP licence and additional licence held by Export Houses / Trading Houses will cease to be valid for import of any item which could be imported under OGL during 1981-82 but is no longer so in this import-export policy.

The tallow of animal origin ceased to be an OGL item with effect from June 5, 1981 when its import was canalised and the State Trading Corporation alone was allowed to import it. Effect was given to this notification issued on June 5, 1981 in the import policy for the period April 1982 to March 1983 by including the tallow of animal origin in Appendix 8 which contained a list of items the import of which is canalised through Public Sector Agencies. The licences against which beef tallow was imported at the Calcutta Port, except one were issued during the year 1981-82 and the same ceased to be valid for the import of which is canalised through Public Sector Agencies. The licences against which beef tallow was imported at the Calcutta Port, except one were issued during the year 1981-82 and the same ceased to be valid for the import of beef tallow by virtue of the provisions of the aforementioned para 231(3) under 1982-83 Import-Export Policy. We therefore, agree with the finding of the Joint Chief Controller of Imports and Exports, though for different reasons, that the import of the beef tallow at the Calcutta Port was unauthorised and had been done in violation of the Import (Control) Order.

6. So far as the goods brought at Bombay port are concerned, the same were allowed to be re-exported under orders of the High Court of Bombay and the order of the Collector imposing penalty was quashed because by that time the import of tallow of animal origin had been completely banned. The import of beef tallow was thus not completed which could involve the violation of Import-Export Policy or of the Customs Act because, as held in *K. R. Ahmed Shah v. Addl. Collector of Customs, Madras*, 1981 E. L. T. 153 *Trilochan Singh v. Union of India* 1982 E. L. T. 203: 1982 Tax LR 2894 (Guj) unless the goods were brought in the country for the purpose of use, enjoyment, consumption, sale or distribution so that they are incorporated in and got mixed up with most of the property of the country they cannot be said to have been imported.

7. In view of the aforesaid finding that the beef tallow imported at Calcutta was unauthorised and the Company thus violated the provisions of Imports (Control) Order, it has to be determined whether the Joint Chief Controller of Imports and Exports was not competent to take a decision contrary to that of the Collector of Customs and pass the impugned order in exercise of its powers under Clause 8(1) (g). Though in the aforementioned notice issued to the Company, it was stated that the clearance of the beef tallow by the Collector of Customs was conditional

but no plea in this regard has been specifically taken in the written statement apart from mentioning that it was for the petitioner to produce evidence to establish this fact. Even the impugned order has not been based on this consideration. Still, during the course of the arguments we called upon the learned counsel for the Union of India to produce the record of the Collector of Customs to find out if the clearance made of the aforementioned goods was conditional one but the record was never produced in spite of the fact that the case was adjourned because of nine days spell of vacation. We have, therefore, no option but to presume that the clearance of the beef tallow by the Collector of Customs was unconditional and proceed on this basis.

8. The jurisdiction of respondent No. 3 was challenged on the ground that once the Collector had cleared the goods in exercise of its statutory powers under the Customs Act, his order would not be open to review by the authorities under the Imports (Control) Order. This objection was overruled holding that the authorities under the Imports(Control) Order had independent jurisdiction under Clause 8 to determine whether the breach of any law relating to customs or Imports and Exports of goods or Foreign Exchange has been committed or not. In the written statement filed in this Court reliance has also been placed on para 245 (1) and (2) in support of this stand which provide that any interpretation of the import policy given in any manner or by any person will not be binding on the Chief Controller of Imports and Exports or in law and the interpretation of the import and export policy or the procedure given by the aforesaid authority will prevail over any other clarification in the same matter given by any other person.

The learned counsel for the petitioners, on the other hand, apart from relying on the provisions of the Customs Act, referred to para 325 of the Hand Book of Import-Export Procedures which provides that although in case of doubt in regard to the correct description of goods given in the licence or any other matter concerning the import, the Customs Authorities may consult the Import Trade Control Authorities, the matter of the clearance of goods and the assessment of duty will be dealt with by the Customs Authorities finally. However, no precedent directly dealing with the question was cited by any of the parties and the question involved which is not free from difficulty has to be decided on consideration of bare provisions of the two statutes.

9. Section 111(d) of the Customs Act provides that any goods which are imported or attempted to be imported or brought in the Indian Custom 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 shall be liable to confiscation. The Collector of Customs is authorised under S. 122 to adjudge the question of confiscation or penalty. From a combined reading of these two provisions it is apparent that the Collector is entitled to adjudge if there is violation of the provisions of not only of the Customs Act but also of any other law including the provisions of Imports (Control) Order. An appeal against the order passed by the Collector or any other subordinate authority under S. 122

lies to the Collector of Appeals and the order passed by the Appellate Authority is further open to challenge before the Appellate Tribunal constituted under S. 129 of the Customs Act.

The matter does not rest even there and the party aggrieved is further given the right to ask the Tribunal to refer the matter to the High Court on any question of law arising out of such order and if the Appellate Tribunal finds that there is a conflict of opinion in the decisions of various High Courts, the question can be referred straight to the Supreme Court. It is, therefore, apparent that very elaborate machinery is provided for getting the questions involved relating to the import of goods determined by the highest court of the land. On the other hand, in the Imports (Control) Order, power is given to the Central Government / Chief Controller of Imports and Exports to suspend or cancel the licence under the circumstances enumerated in sub-clause (1) of Clause 8. Prior to the suspension or cancellation of the licence a reasonable opportunity of being heard is required to be given to the person concerned under Clause 10(1). The Chief Controller / Additional Controller has been given power under Clause 10 Clause E to call for and examine the record of any proceeding in which action under sub-cl.(1) or sub-clause (3) of Clause 8 has been taken. There is no further remedy provided against the order passed suspending or cancelling the licence.

It is not disputed that even after the penalty imposed under the Customs Act, action can be initiated and appropriate orders passed suspending or cancelling the Import Licence under Clause 8 of the Imports (Control) Order. If the Collector has under the Customs Act recorded the finding that the provisions of the Imports and Exports Control Act or Imports (Control) Order have been violated, there would be no obstacle in the way of the authorities under the Imports (Control) Order to take proceedings for the suspension or cancellation of the import licence but if the former has cleared the goods which necessarily means that by their Import no provision of the Imports and Exports (Control) Act or the instructions issued thereunder has been violated it is difficult to agree with the view that its finding would be open to review by the authorities under C. 8 of the Imports (Control) Order. The order of the Collector under the Customs Act if not acceptable can be challenged before the Board. The Board which is presided over by a Judicial Member and has at least one technical member is a Judicial Tribunal and if it has recorded a finding that any provisions of the Imports and Exports (Control) Act or the Order has not been violated it would not be open to review by the executive authorities under Clause 8 because it is the basic principle of jurisprudence as well as the dictate of the rule of law contained in the Constitution that the decisions of the Judicial Courts and Tribunal are not open to review by any executive authority howsoever high it may be.

The provision contained in para 245 also does not run counter to this proposition because all that it provides is that any interpretation sought or given by the Court Controller of Imports and Exports would prevail against an opinion of any other authority and it in no way affects the orders passed by the Collector under

the Customs Act. Moreover, anything contained in the Import-Export Policy issued by the Ministry of Commerce would not override the provisions of the statute. It was probably for this reason that neither any reliance was placed on the said clause while passing the impugned order nor at the time of arguments. That apart, in spite of this provision, para 325 contained in the Hand Book of Import-Export Procedure which is stated to be a supplement to the import and export policy also makes it clear that the final authority as to the clearance of the goods and assessment of duty are the Customs Authorities though in case of doubt any guidance may be sought from the Chief Controller of Imports and Exports. A combined reading of the two provisions leaves no manner of doubt that function of the Chief Controller is only advisory and he is not invested with any power by virtue of the provisions of said para 245 to review or override the decision of the Collector rendered in exercise of its statutory powers under the Customs Act.

10. The matter can be looked at from another angle also. Instead of an order passed in favour of the licensee if it is passed against him under the Customs Act, the remedy available to him would be only one provided under the aforementioned Act and he cannot approach the Chief Controller of Imports and Exports for any relief against that order. Nor there is any provision authorising the Chief Controller of Imports and Exports to invoke its revisional power to vary or modify any order passed by the authorities under the Customs Act as to the violation of any provisions of the Imports and Exports (Control) Act or the Order. If there is no jurisdiction to interfere with the order passes against an importer under the Customs Act vice versa would also be correct, that is, an order passed in his favour also would not be liable to be reviewed in exercise of the powers conferred under Clause 8 of the Imports (Control) Order. We are, therefore, of the considered view that once the Collector has cleared the goods which necessarily implied that no provision of the Imports (Control) Order and the Import and Export Policy was violated in the import of such goods, the Chief Controller of Imports and Exports or any subordinate authority would not be competent to review the matter and pass a contrary order.

11. The petitioners have to be absolved of the penalty imposed for another reason also, namely, that no one can be made to suffer because of the fault of the Court, Tribunal or the other statutory authority. In the present case although the beef tallow is not an OGL item and as such could not be imported against REP licence still the Collector of Customs cleared the goods against those licences. If the Collector had not cleared the goods, the petitioners would have re-exported them and saved themselves of this predicament. The view which we have expressed above on the competency of the authorities under the Imports (Control) Order to take action would be more in consonance with justice and fair play for this reason as well than the contrary view taken in the impugned order.

12. The learned counsel for the petitioners also sought to challenge the vires of the provisions of the aforementioned clause 8 on the ground that unbridled and

uncanalised powers have been given to suspend the licence for any period. He, however stated that if the objection of the petitioners as to the jurisdiction of respondent No. 3 to take action is upheld, he would not press for a decision on the vires of the said clause. We, therefore, do not propose to go into this matter.

13. For the reasons recorded above, this petition is allowed and the impugned order quashed but in the circumstances of the case, the parties are left to bear their own costs.

14. Petition allowed.