(1984) 11 BOM CK 0026

In the Bombay High Court

Case No : Writ Petition No. 845 of 1981

Oswal Woollen Mills Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 20-11-1984

Acts Referred:

Customs Act, 1962 — Section 111

Citation : (1989) 23 ECR 286 : (1989) 43 ELT 57

Hon'ble Judges : S.P. Bharucha, J

Bench : Single Bench

Judgement

1. This petition concerns the import of woollen rags.

2. Woollen rags, by reason of an exemption notification dated 21st March 1959, were totally exempt from Customs duty.

3. The petitioners imported five consignments of woollen rags in 1972-73. On 10th January 1973 they were served with a notice to show cause why the consignments should not be confiscated as they contained second-hand clothing. On 13th June 1973 the Collector of Customs held that the import was not covered by the petitioners'' licence for woollen rags against which their clearance was claimed; it was unauthorised and contravened Section 111(d) of the Customs Act read with Section 3 of the Imports and Exports (Control) Act. He ordered absolute confiscation. In this order the Collector noted the argument on behalf of the petitioners that woollen rags need not be mutilated; it was sufficient if garments were old, used and discarded. The second argument on behalf of the petitioners was that "woollen" covered any fabric in which there was a mixture of wool. A number of definitions of ''rags'' were noted by the Collector. From these it appeared to him that mutilation as such was not an essential pre-condition to the fabric or hosiery or garment being called a rag. This was, however, not to say that any un-mutilated fabric, hosiery or garment could be called a rag. The emphasis in the definitions seemed to be on the old, used and discarded nature of the articles. It also appeared from the definition that serviceable hosiery or

garments which could be sold in a second-hand clothing market for clothing purposes could not be called rags. They could be called rags only if they were in such a condition that no use was possible other than conversion into "shoddy or mungo". If hosiery or garments were discarded in richer countries at a stage when their useful life had not been exhausted, and if such hosiery to garments were likely to be sold in India they could not be considered rags in India. It was common knowledge that large numbers of such hosiery and garments had been sold in the Indian markets as second-hand clothing. The imported goods were not ''rags'' in the condition in which they had arrived. They were, in fact, a mixture of rags and second-hand clothing. They could not be called ''woollen'' rags.

4. The petitioners preferred appeals before the Central Board of Excise and Customs against the confiscation order dated 13th June 1973.

5. It appears that there were several importers of woollen rags whose consignment were confiscated on the same reasoning. One of such importers, Nagesh Hosiery Mills, filed in this court a writ petition challenging the order of confiscation of its consignments. The writ petition, being O.O.C.J. Misc. Petition No. 92 of 1974, Nagesh Hosiery Mills v. M. R. Ramachandran, was decided by R. P. Bhatt, J. In his judgment and order dated 13th, 14th and 15th January 1975 the learned Judge considered how the entry relating to woollen rags in the Import Trade Control Manual should be construed. Reference was made by him to the judgment of Tulzapurkar J. dated 30th April 1970 in Miscellaneous Petition No. 491 of 1964. Summarizing the principles there laid down, he held that general statutes would prima facie be presumed to use words in their popular sense; that the Central Excise and Salt Act was a general statue; and that the proper rule of constructions applicable to the entries in its Schedule was the sense in which persons dealing in or commercially conversant with the articles therein mentioned would attribute to them and not a scientific, technical or laboratory sense. The learned Judge found that the Collector of Customs had not in the confiscation order impugned before him construed the expression "woollen rags" in accordance with these principle. He had only considered the dictionary meanings. The expression had a specific connotation in the trade and it was his duty to find what that connotation was. The Collector had dissected the expression into the words "woollen" and "rags". This was a patent error. He had impermissibly attributed different meanings to the word ''rags'' in the richer countries and in India. He had relied upon what he had termed "common knowledge" without there being any evidence on record. Upon a true interpretation of the expression "woollen rags", the learned Judge found that the Collector was in error in holding that the imported goods were not covered by the licence. He found that mutilation was not a condition precedent for the import and did not affect its validity.

6. The respondents in the Nagesh Hosiery Mills petition filed an appeal against the judgment and order of Bhatt J.

7. It is the case of the petitioners that an arrangement was arrived at between the importers of woollen rags affected by orders of confiscation thereof, including the petitioners, on the one hand and the Customs authorities on the other that, pending the final decision in the Nagesh Hosiery Mills'' case, consignments would be permitted to be cleared subject to the condition that appeals filed against confiscation orders before the Central Board of Excise and Customs would be unconditionally withdrawn; that the goods imported would be mutilated; and that the importers would execute bank guarantees to pay the full duty on woollen rags, if it was found to be leviable by the final decision in the Nagesh Hosiery Mills'' case.

8. It is the petitioners'' case that, accordingly, on 13th February 1978 they wrote to the Central Board of Excise and Customs withdrawing the appeals filed by them against the confiscation order dated 13th June 1973.

9. On 3rd March 1978, the Assistant Collector of Customs wrote to the petitioners a letter. It reads thus :

"In considered of the representation made to the Government by some of the importers of consignments said to contain woollen rags, it is proposed that pending the Court''s final decision in the Nagesh Hosiery Mills case consignments in question covered by the appeals would be permitted to be cleared subject to the following conditions being observed :-

(I) The appeal filed by the importers is withdrawn unconditionally.

(II) goods are mutilated under Customs supervision at the expense of the importer before clearance in the Port Trust premises or at the place of the seizure and present storage and on payment of duty as woollen rags prevalent at the time of importation.

(III) the importers execute a guarantee with suitable surety of a bank undertaking to pay the full duty leviable on woollen rags but the exemption, if found leviable on the basis of the Court''s final decision in the Nagesh Hosiery Mills case.

These facilities will not be available for consignments involving under valuation or concealment at importation of garments by cutting them only at seams.

In case you are agreeable to the above you may intimate your willingness within 15 days."

10. On 5th April 1978 and 25th May 1978 the Central Board of Excise and Customs passed orders permitting withdrawal of the petitioner''s appeals.

11. On 26th April 1979 the appeal filed by the respondents against the judgment and order of Bhatt J. in the Nagesh Hosiery Mills'' case was allowed to be withdrawn. The relevant portions of the order are thus :

"The Counsel appearing for the appearing for the Appellants Union of India says that the Appellants have in its possession the Indian Customs Tariff Guide, 13th Edn., 1960, which lays down the guidelines for determining woollen rags and also further material in the form of Public Notices and representations made by the All India Woollen Mills'' Association and the Federation of Woollen manufacturers in India to the Central Board of Revenue, Ministry of Finance, now known as the Central Board of Excise and Customs. We do not express any opinion as to what the result would be if such material were to be produced in any other case.

The Counsel appearing for the Respondents says that the Respondents hereby agree and undertake that the goods being the subject matter of the Petition will be mutilated at the Respondents'' factory at Ludhiana in the presence of the officers of the Customs/Excise in such a manner that the same cannot be used as serviceable garments, but, will have to be used as rags only ....

On the above undertaking given by the Respondents, the Appellants apply for leave to withdraw the Appeal.

Appeal allowed to be withdrawn. No order as to costs."

12. The petitioners cleared two of the five consignments imported by them in furnishing bank guarantees as required by the arrangement, as recorded in the Assistant Collector''s letter dated 3rd March 1978.

13. By letters dated 11th May 1979, 12th November 1980 and 3rd January 1981 the petitioners asked for permission to clear their three uncleared consignments on the basis that the judgment of Bhatt J. had become final.

14. On 18th April 1981 the Assistant Collector of Customs wrote to the petitioners to say that :

"........... even though you had withdrawn the appeals unconditionally in terms of the letter dated 3-3-1978, you did not execute any bond as required therein. In the circumstances, the bales in question stand confiscated to the Government. It is regretted that your request to allow clearance of the 3 consignments after mutilation to this stage cannot be considered. Your other two consignments wherein you had executed the bonds have been already allowed clearance."

15. This petition was filed on 26th June 1981 impugned the letter dated 18th April 1981. By reason of an interim order on the petition, passed on 10th August 1981, the operation of the impugned order was stayed and the petitioners cleared the three consignments.

21st November 1984

16. Mrs. Mody, learned counsel for the petitioners, submitted that the judgment of Bhatt J. in the Nagesh Mills'' case having become final, the petitioners were entitled to free clearance of their consignments and that the order 18th April 1981 was, therefore, bad.

17. Mr. Sethna, learned counsel for the respondents, pointed out that the only

order under challenge in the petition was the order dated 18th April 1981. This, he urged was not a fresh order but only a reiteration of the order of confiscation dated 13th June 1973. The consequence of the order of confiscation dated 13th June 1973 could be altered only by the Central Board of Excise and Customs, but the petitioners had withdrawn the appeals filed by them against the order of confiscation dated 13th June 1973 before that Board. Mr. Sethna urged that the letter dated 3rd March 1978 was only a working arrangement and that the petitioners had not compiled with the conditions thereof. Though this letter required confirmation of its terms by the petitioners within fifteen days, there was no letter on record which so confirmed the arrangement. Lastly, it was argued by Mr. Sethna that the order of the Appeal Court dated 26th April 1979 restricted the finality of Bhatt J''s judgment in the Nagesh Hosiery Mills'' case to the facts of that case. The judgment might or might not be applicable to the facts of the present case, but this was not in issue. It would have been in issue only if the petition had been amended so as to bring under challenge to order dated 13th June 1973.

18. The reasoning of the order of confiscation dated 13th June 1973 and that of order confiscation impugned before Bhatt J. is the same.

19. The terms of the arrangement between the petitioners and the respondents are set out in the letter dated 3rd March 1978. The arrangement hinges upon this; that the final decision in the Nagesh Hosiery Mills'' case would govern the fate to the consignments of woollen rags that had been imported. Pending that final decision, the consignments were allowed to be cleared provided appeals filed against the orders of confiscation thereof were unconditionally withdrawn, the woollen rags contained in the consignments were mutilated and the importers gave guarantee to pay the full duty leviable on woollen rags, if found payable by the final judgment in the Nagesh Hosiery Mills'' case. The consequence of the arrangement is this : If the judgment of Bhatt J. in the Nagesh Hosiery Mills'' case was reversed, the orders of confiscation of consignments would stand; if consignments had been cleared under the arrangement, the guarantees given in respect thereof would become enforceable. If, on the other hand, the judgment was upheld, the orders of confiscation would become inoperative and the consignments could be cleared freely and without any conditions; the guarantee given in respect of consignments clear under the arrangement would be unenforceable and would stand discharged.

20. That this arrangement was arrived at between the petitioners and the Customs authorities is clear from the fact that there is no affidavit in reply; from the fact that two of the five consignments imported by the petitioner were permitted clearance pending the hearing of the appeal from the judgment of Bhatt J.; and from the fact that the petitioners withdrew their appeals before the Central Board of Excise and Customs.

21. Upon the withdrawal of the appeal against the judgment of Bhatt J. in the Nagesh Hosiery Mills'' case, that judgment became final. Upon its becoming final,

the orders of confiscation of consignments of woollen rags covered by the arrangement became inoperative and the consignments could be cleared freely and without conditions; and the guarantees given in respect of consignments cleared under the arrangement became unenforceable and stood discharged.

22. In passing, I note a decision of the Central Board of Excise and Customs dated 17th January 1981 1981 ECR 117D. Finding that the appeals before them were in all respects the same as in the Nagesh Hosiery Mills'' case, the board followed Bhatt''s judgment there in.

23. Paragraph 1 of the Appeal Court''s order dated 26th April 1979, relied upon by Mr. Sethna, does not in any manner affect those consignments of woollen rags answer covered by the arrangement and which were, by reason thereof, made bound by the final order in the Nagesh Hosiery Mills'' case. It was not open to the Customs authorities to produce material such as that mentioned in that paragraph in regard to consignments governed by the arrangement.

24. The three consignments of the petitioners could be cleared by them freely and without any conditions once appeal from Bhatt J''s judgment in the Nagesh Hosiery Mills'' case was withdrawn. In that the impugned orders does not permit such clearance it is bad.

25. The order dated 18th April 1981 is quashed and set aside.

26. Under the interim order in the petition the three consignments have been cleared.

27. The respondents shall pay to the petitioners the costs of this petition.

28. Rule accordingly.

29. The bond given by the petitioners to the Prothonotary and Senior Master pursuant to the interim order shall stand duly discharged. The petitioners shall be at liberty to withdraw the sum of Rs. 26,120/-, with accrued interest, deposited by them with the Prothonotary and Senior Master to the credit of this petition in lieu of the sureties required by the interim order.

