(1988) 07 BOM CK 0002

In the Bombay High Court

Case No : Writ Petition No. 2314 of 1986

PFAFF Industriamaschinen MBH — APPELLANT

Vs

Additional Collector of Customs — RESPONDENT

Date of Decision : 19-07-1988

Acts Referred:
Customs Act, 1962 — Section 111, 124, 2(26)
Imports and Exports (Control) Act, 1947 — Section 3(1)

Citation : (1988) 18 ECR 475 : (1988) 37 ELT 500

Hon'ble Judges : Sujata Manohar, J

Bench : Single Bench

Advocate : P. Rajgopal, P.R. Ashar and R. Rajgopal, instructed by Bhaskar and Co, for the Appellant; K.R. Bulchandani, for Respondents 1 to 5 and U.J. Makhija, for the Respondent

Judgement

Sujata Manohar, J.—Petitioner is a Corporation incorporated in West Germany. It manufactures, inter alia, industrial Sewing Machines. The 1st petitioner has a manufacturing unit in Brazil. It has subsidiaries in other countries like Singapore, U.K. and U.SA The 2nd petitioner, at all material times, was the agent of the 1st petitioner. The 3rd petitioner is the Manager of the Bombay Branch of the 2nd petitioner.

2. The 1st petitioner received a purchase order dated 22.12.1984 from the 3rd respondent Adi Impex, Kutch, India through the 2nd petitioner for 100 Nos. Pfaff "Class: 463/01 BS High Speed flat bed lock-stitch industrial sewing machines complete with stand, table, treadle, motor and essential spare parts". During the relevant period under the Import Policy for the period 1984-85 these machies could be imported into India under Open General Licence by actual users. Thereafter respondent No. 3 opened a letter of credit in favour of the 1st petitioner dated 3.1.1985.

3. Under the letter of credit the shipment was to be effected not later than 28th February 1985. Letter of credit was valid for negotiation till 15th March, 1985.

4. Pursuant to the purchase order the 1st petitioner shipped from their manufacturing unit at Paranague (Brazil) the goods in question within the prescribed period of shipment. The goods were shipped by a vessel MS NEDLLOYD LEUVE on 28th February 1985. The negotiation of documents, however, was for various reasons set out in detail in the petition, delayed beyond 15th March, 1985. The petitioners conveyed the reasons for the delay to the 3rd respondent so as to enable respondent No. 3 to accommodate and take delivery of the goods as the vessel had already left the shores of Paranague. The goods were shipped from Paranagua to Singapore. Thereafter the goods were transshipped by another vessel S.S. DHAULAGIRI to the Port of Bombay. The transshipment expenses were incorporated in one single Bill of Lading which mentioned route of shipment as Paranague to Bombay via Singapore. The goods arrived in Bombay on 23.5.1985. The 2nd petitioner by a telex dated 25.5.1985 informed respondent No. 3 of the arrival of the vessel and requested it to retire the documents pertaining to these goods. Respondent No. 3, however, refused to retire the documents as the documents were stale and refused to dear the goods and take delivery of the goods.

5. At the request of the petitioners, respondent No. 4, being the Agent of the shipping company in Bombay, filed the Bill of Entry in respect of these goods for the purpose of re-exporting these goods to Singapore where the 1st petitioners have an establishment.

6. The Additional Collector of Customs by his order dated 27.12.1985 confiscated the goods on the ground that the import was without any import licence. He, however, permitted re-shipment of the goods on fine of Rs. 1,00,000 subject to the following conditions :

(1) That fine shall be paid in foreign exchange;

(2) That the shipment is allowed to the port of loading namely Paranague;

(3) That the shipment will be through an indian Flag ship.

Before the Additional Collector of Customs, respondent No. 4, who had filed the Bill of Entry only for the purpose of reexporting the goods, alone had appeared. The order of the Additional Collector of Customs refers to them as the Agent of importers. The petitioners, who were aggrieved by this order, filed an appeal before the Customs, Excise and Gold Control Appellate Tribunal. For this purpose the 1st petitioner authorised the 2nd petitioner to appear on their behalf and file the said appeal. The Tribunal rejected the Appeal on the preliminary ground that the aggrieved party was the 4th respondent and not the German Supplier. It said that the ownership of the goods was not relevant in this connection and even the German firm did not have the right to appeal in the present case. The order of the Appellate Tribunal is dated 4.7.1985. Being aggrieved by both these orders the petitioners have come by way of present writ petition. No affidavit in reply has been filed by any of the respondents including the Additional Collector of Customs.

7. The 1st petitioners claim to be the owners of these goods. They have produced the Bank''s (Indian Overseas Bank) Certificate dated 7.1.1986, which they had also produced before the Customs authorities to show that respondent No. 3 did not retire the documents pertaining to these goods and had not paid for these goods. In these circumstances the petitioners continued to be the owners of the goods. These goods were imported by respondent No. 3 for use in their Kutch unit as actual user under OGL The Additional Collector of Customs has not filed any affidavit to show in what manner any provision of the Customs Act, 1962 or the imports and Exports (Control) Act, 1947 was violated by respondent No. 3 or the petitioners in connection with the import of these goods. The Additional Collector of Customs has made a bold statement that the goods have been imported in contravention of the provisions of Sub-section (1) of Section 3 of the Imports and Exports (Control) Act, 1947 read with clause 3 of the Imports (Control) Order, 1955. It is not dear from this statement what provisions of law have been violated.

8. u/s 111, Sub-section (d) of the Customs Act, 1962 goods brought from a place outside India shall be liable to confiscation if they are imported contrary to any prohibition imposed by or under this Act or any other law for the time being in force. There is no material before me to show that the provisions of this section are attracted in the present case.

9. The order of the Additional Collector of Customs dated 27.12.1985, therefore, cannot be sustained. The conditions imposed by him also do not have any authority of law.

10. Under an order of the Appeal Court in this writ petition dated 18th November, 1986 (Appeal No. 1030 of 1986) the petitioners have been permitted to reship the goods to Singapore. They have, however, paid the fine of Rs. 1 lac in foreign exchange on respondents Nos. 1 and 5 agreeing that in case the petitioners succeed in the petition the amount will be refunded to them in foreign exchange.

11. The order of the Appellate Tribunal dated 4.7.1986 also cannot be sustained. They have rejected the appeal only on the ground that the German Supplier is not a party aggrieved. It is difficult to appreciate the stand of the Tribunal. u/s 124 of the Customs Act, 1962 no order confiscating any goods or imposing any penalty on any person shall be made unless the owner of the goods or such person is given a notice in writing as set out therein and is given an opportunity of making a representation and is given a reasonable opportunity of being heard in the matter. The ''importer'' of goods is also defined under Sub-section 26 of Section 2 of the Customs Act, 1962 as including any owner or any person holding himself out to be the importer. As the goods in question belonged to the 1st petitioners, it is they alone who are interested in the goods. It is the 1st petitioner who have paid the penalty and reshipped-the goods to Singapore. They are directly affected by the impugned order and they must be considered in these circumstances as the party aggrieved.

12. The phrase "personally aggrieved" was considered in the context of the Advocates Act, 1961 by the Supreme Court in the case of Bar Council of Maharashtra Vs. M.V. Dabholkar and Others, . The Supreme Court said that a person will be held to be aggrieved by a decision if that decision is materially adverse to him. Again a person is aggrieved if a legal burden is imposed on him. The petitioners satisfy both these tests. The order of the Tribunal also, therefore, is bad in law.

13. It is submitted by Mr. Bulchandani for respondents Nos. 1 and 5 that the matter should now be referred back to the Additional Collector of Customs for re-adjudication. No useful purpose can be now served by remanding the matter back to the Additional Collector of Customs in the circumstances of the present case.

14. Orders of the Additional Collector of Customs and the Customs, Excise and Gold Control Appellate Tribunal dated 27.12.1985 and 4.7.1986 respectively are set aside.

15. Respondents Nos. 1 and 5 are directed to refund to the 1st petitioner the sum of Rs. 1 lac paid by them as aforesaid in foreign exchange as agreed to by them before the Appeal Court.

16. Rule is made absolute accordingly.

17. Respondents Nos. 1 and 5 to pay to the petitioners costs of the petition.

