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(1991) 10 BOM CK 0056

In the Bombay High Court

Case No : Writ Petition No. 552 of 1982

Pravin Nanalal Shah — APPELLANT

Vs

S.N. Karkhanis, Collr. of Cus. (Appeals) — RESPONDENT

Date of Decision : 11-10-1991

Acts Referred:

Citation : (1991) 10 BOM CK 0056

Hon'ble Judges : R.G. Sindhakar, J.;M.L. Pendse, J.

Bench : Division Bench

Judgement

Pendse, J.—By this petition filed under Article 226 of the Constitution, the petitioner is challenging legality of the order dated February 27, 1982 passed by the Appellate Collector of Customs, Customs House, confirming the order passed by the Assistant Collector confiscating the goods imported by the petitioner. The facts leading to the passing of this order are not in dispute and are required to be briefly stated to appreciate the grievance of the petitioner.

2. On June 29, 1981 REP licence was issued in favour of M/s. Janso Exports Pvt. Ltd. The Licence was transferable and the licensee transferred it in favour of the petitioner on July 11, 1981. In pursuance of the import licence, the petitioner imported 150 cases of Teachers'' Highland Cream Scotch Whisky valued at Rs. 46,600/- and an import Bill of Entry was lodged on October 15, 1981. The Customs authorities did not grant clearance and served show cause memo dated December 19, 1981 upon the petitioner to show cause why the imported goods should not be confiscated as the goods imported are not related to export product and secondly goods imported cannot be considered as raw material. After the petitioner filed reply, the Deputy Collector of Customs passed order dated January 6, 1982 holding that the import was invalid as importation was not covered by the licence. The Deputy Collector of Customs directed confiscation of goods under Section 111(d) of the Customs Act. The Deputy Collector did not grant option to the importer to pay redemption fine for clearance of goods. The petitioner carried appeal before the Collector of Customs (Appeals), but appeal

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ended in dismissal, and that has given rise to the filing of the present petition.

3. At the time of admission of the petition, the learned Single Judge by order dated March 24, 1982 observed that prima facie there is no restriction that the imported goods must have relation to the exported ones. The learned Judge directed that the consignment should be released on the petitioner furnishing Bank guarantee to the tune of Rs. 93,200/-. The learned Judge, further directed that the goods should be escorted to the bonded warehouse under the escort of the Customs Officers. It was further directed that the blending of the whisky with the Indian one shall be done under the supervision of the Customs Officers and the cost of the escort as well as the supervision shall be borne by the petitioner. It is not in dispute that in pursuance of the order of the learned Single Judge, the goods were cleared and were ultimately used for blending in the presence of the Customs Officers.

4. Mr. Bulchandani, learned Counsel appearing on behalf of the petitioner submitted that in view of what has transpired during the pendency of the petition, the orders passed by the authority below are required to be set aside. There is considerable merit in the submission of the learned Counsel. As regards the claim of the department that the goods imported are not related to the export product, the same cannot be entertained in view of the decision of this Court reported in Bussa Overseas and Properties (Pvt.) Ltd. Vs. Union of India, . As regards the claim of the Department that the goods imported cannot be considered as raw material, in our judgment, it is not necessary to examine this aspect in the present case in view of the fact that the goods imported were cleared by an interim order and were ultimately used by the importer. The question as to whether the imported whisky can be considered as raw material need not be decided in the present proceedings and we make it clear that we are not disturbing the conclusion of the authorities below on this aspect, but the orders of the authorities below are set aside in view of what has transpired during the pendency of the petition. This decision should not be construed as holding that import of whisky should be considered as raw material and that question will be determined in an appropriate case. Accordingly petition succeeds and the impugned order dated January 6, 1982 passed by the Deputy Collector of Customs and the order dated February 27, 1982 passed by the Appellate Collector of Customs are set aside. No consequential relief is required in view of the interim order passed by the learned Single Judge. The Bank guarantee furnished by the petitioner shall stand discharged. In the circumstances, there will be no order as to costs.

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