(1987) 07 DEL CK 0014

In the Delhi High Court

Case No : Civil Writ Petition No. 1858 of 1987

Rajeev Woollen Mills APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 24-07-1987

Acts Referred:

Citation : AIR 1988 Delhi 180 : (1988) 1 Crimes 375 : (1987) 33 DLT 50 : (1988) 15 ECC 232 : (1987) 13 ECR 1075 : (1987) 31 ELT 639

Hon'ble Judges : R.N. Aggarwal, J;Jagdish Chandra, J

Bench : Division Bench

Advocate : A.K. Sen, R.K. Garg, Sat Pal and P.K. Bahl, for the Appellant;

Final Decision : Dismissed

Judgement

Aggarwal, J.—There is two-fold challenge in this petition under Article 226 of the Constitution of India; the first challenge is to the Customs Public Notice No. 7/87 dated 3rd March 1987 which fixed certain guidelines in respect of the import of completely pre-mutilated woollen rags/synthetic rags. The said public notice provided that all consignments of woollen rags/synthetic rags which have already landed at ICD or which are shipped on or before 30th April 1987 will be allowed clearance after proper mutilation, if found necessary, in the manner specified in the notice. Any consignment that may be shipped after 30th April 1987 should satisfy the conditions detailed in the notice and no mutilation will be permitted for such consignments. The challenge to the above public notice was no the ground that it modified the provisions of the Import Policy which adversely affected the importers like the petitioner and the same is, Therefore, vocative of Articles 14, 19(l)(g) and 301 of the Constitution of India and is also against the doctrine of promissory estoppel. We may say that the said public notice has been superseded by the Public Notice No. 14/87 dated 17th June 1987 and, Therefore, the said public notice No. 7/87 is no longer in force and, Therefore the first challenge no longer survives for decision.

2. The second challenge pertains to the meaning to be given to the definition of

the woollen rags as given in Appendix 6 page 168 Volume I of the Import and Export Policy for April 1985 to March 1988. The contention of Mr. A K. Sen, the learned counsel for the petitioner, is that the goods in question should be judged by the standard as is understood by a trader who usually deals with such items. Shri Sen in support of his contention relied on Re : Hind Hosiery Mills and Others, 1982 E.L.T 424 decided by the Central Board of Excises and Customs and M/s. Nagesh Hosiery Mills v. M.R. Ramchandran and anr. decided by Mr. Justice R.P. Bhatt on 15th January 1975.

3. The Government gazetted its Import and Export Policy for April 1985 to March 1988 in the Gazette of India Extraordinary dated 12th April 1985. Volume I contains Import and Export Promotion Policy and Volume II contains policy in respect of items under Export licenses. Appendix 6 (Volume 1) contains the items which can be imported by the categories of importers specified therein under Open General license. The said appendix also contains the conditions governing importation of the items mentioned therein. We are concerned in this petition with the import of raw materials in the shape of rags. Condition No. 37 at page 168 regarding the importation of rags is important and it reads as follows :

"(37).(i) Import of Woollen Rags/Shoddy Wool/synthetic rags will be allowed only when these are imported in completely premeditated condition. (ii) Definition of woollen rags is as follows : (a) ''New''-waste woollen cloth whether woven or knitted which is left after a garment had been out cut including genuine tailor cutting piece ends, discarded pattern bunches and sample bits. (b) ''Old''-Rags of woollen textile fabrics (including knitted and crocheted fabrics) which are required for manufacture of shoddy yarn and may consist of articles of furnishing or clothing or other clothing so worn out, soiled or torn as to be beyond cleaning or repair. (iii) The above definition shall also apply mutates mutants to synthetic rags."

The petitioner is a manufacturer of blankets and shawls. It has its factory at Jalandhar and is doing the business under the name style of M/s. Rajeev Woollen Mills, with its head office at Ludhiana. The case of the petitioner is that it imports rags in completely mutilated condition for the purpose of manufacturing blankets and shawls. The manufacturing unit of the petitioner is registered as a small scale unit with the Government of Punjab, Directorate of Industries Jalandhar, for the manufacture of shoddy shawls and blankets under registration No. DSI/16/107/01032/PNL dated 24.10.1986. On 11th February 1987 the petitioner placed an order on American By Products Incorporated, Philadelphia, U.S.A. for the supply of 53640 K.Gs. of ''old synthetic rags in completely pre-mutilated condition''. The said order was duly registered with the Textile Commissioner, Amritsar on 16th February 1987. On 30th March 1987 the foreign supplier under Invoice No. 98402 shipped the goods being 138 bales of ''old synthetic rag completely pre-mutilated'' to the petitioner-firm. The foreign supplier also sent a certificate of inspection by General Superintendent Company, Surveyors and Inspectors. The said firm certified that "the container carries completely pre-mutilated rags. Each piece of rag colt the is cut into two or more pieces. Therefore, the same is completely mutilated and cannot be repaired.

4. According to the petitioner on arrival of the goods at ICD, Delhi he filed the bill of entry on 10th June 1987. The Assistant Collector of Customs (Respondent No. 3) however, refused to clear the goods as, according to him, the mutilation was not in accordance with the Public Notice No. 7/87 We have earlier stated that the said public notice has been superseded by Public Notice No. 14/87.

5. The goods were inspected by the Assistant Collector of Customs on 8th July 1987 and 14th July 1987 and the examination report of the Assistant Collector reads as follows:

"Examination report dated 8.7.87 :- (Three container Nos. MAEU-2101316, MAEU-2073620 & MAEU-2112938 (138 Bales) "Opened and examined the goods in the presence of the Superintendent (Cus) Appr. (Cus) and Party and opened Bale Nos. 52,65,80,92 and three Bales from other two Containers, were stripped open as the same could not be burst opened due to non-availability of labour. The following type of goods were found in side .the Bales. (a) Sync-Pants cut in two pieces from the middle. Both the legs portions were found inside the same bale; (b) Pants cuts in three portions i.e. two leg portions and one upper portion all the three portion were found in the same bales. In view of above it appears that goods are other than completely pre-mutilated Rags and not satisfying the condition 37 of App. 6 of Import Policy 85-88. Examination report dt. 14.7.87. (Three Container Nos. MAEU-2101316.MAEU-2073620 & MAEU-2112938 (138 Bales). "Examined the goods 100% bales contained in the above mentioned containers, in the presence of the Importer Shri Rajeev Kumar, and the Superintendent (Cus.) I.C.D. and the goods i.e. Syn. pants cut in two pieces and three pieces. This is mixed lot of weaving/knitted pants of different size. The detail of goods found further detailed as under: (i) Pants cut in two pcs. from the middle; (ii) Pants cut in three portions i.e. two leg portions and one upper-portions. The goods found in the same nature as earlier reported in the examination report. It appears that the goods are other than completely pre-mutilated Rags and are not satisfying the condition 37 of App. 6 of Import-Policy 85-88. Representative samples from the consignment drawn and sealed in the presence of the Importer over the dated signature of Shri Rajeev Kumar and Inspector I.P. Mehta, with seal No. 150."

6. Shri Sen contended that the expression ''rag'' has to be given a common sense meaning i.e. as would be known to the trader who usually deals with such items not necessarily for the well-to-do, nor for the man of the street, but as usual in his business to cater for all alike. The counsel contended that the certificate of inspection (page 36) records that the ''container carries completely pre-mutilated rags. Each piece of rag/clothes is cut into two or more pieces, Therefore the same is completely mutilated and cannot be repaired." The counsel further referred to Annexure 8 (page 39) a letter written by the Assistant Director, Ministry of Industry, Small Industries Service Institute, Ludhiana to M/s.

Monika India, wherein it has been written that if the garment/clothe is cut into two or more pieces and it becomes beyond repairs is called completely mutilated. Such rags are used for reprocessing for manufacture of yarns. The counsel on the basis of the above contended that the goods in question which according to the invoice are old synthetic rags completely pre-mutilated fall within the category of ''completely pre-mutilated rags'' and would be in conformity with the conditions laid down in the Import and Export Policy.

7. We have carefully read the authorities Re : Hind Hosiery Mills and others v. Nagesh Hosiery Mills (supra) referred to by Mr. Sen and we are of the view that the said authorities are distinguishable and not applicable to the case in hand. A reading of the said authorities show that when the woollen rags were imported in the authorities referred to above there was no definition for the item woollen rags anywhere either in the Import Trade (Control) Order or in the first schedule to the Indian Tariff Act and, Therefore, the view taken was that the expression ''woollen rags'' will have to be construed not in the scientific or technical or laboratory sense but in the sense in which persons dealing with it or commercial meaning viz. as would be known to the trader who usually deals with such items. We find that the Import Trade (Control) by public notice dated 17th September 1973 had laid down that for the purpose of Import Policy the term ''woollen rags'' when ''old'' would mean ''old and discarded woollen garments which have been mutilated, otherwise than by reaping at the seams and rendered unserviceable''. This definition was further revised by the Import Trade Control authorities by a public notice dated 8th August 1974. The said notifications were held to be not applicable to the goods already shipped or arrived. We, however, find that in the case Hind Hosiery Mills (para 33) the Board while setting aside the order of absolute confiscation had ordered that the goods as released from the order of absolute confiscation shall be mutilated so as to render them totally unserviceable.

8. We find that Condition No. 37 in Appendix 6 (page 168) specifically provides (i) that the import of woollen rags/shoddy wool/synthetic rags will be allowed only when these are imported in completely pre-mutilated condition. The definition clause further requires that old rags of woollen textile fabrics (including knitted and crocheted fabrics), which are required for manufacture of shoddy yard and may consist of articles of furnishing or clothing or other clothing so worn out, soiled or torn as to be beyond cleaning or repair. The Import and Export Policy now in force makes it clear that the old woollen rags to be imported are to be in completely pre-mutilated condition and further they should be so worn out, soiled or torn as to be beyond cleaning or repair.

9. There is no doubt that any one importing the old rags under the Import and Export Policy in force during the relevant period knew the conditions for the import of the old woollen rags.

10. In our opinion the standard for the import of the woollen rags would have to be as laid down in condition No. 37 (Appendix 6 at page 168).

11. The goods in question have already been inspected. We were told by the respondents that they shall be issuing notice to the petitioner for adjudication. It shall be now for the concerned authorities to take a decision on the merits of the case.

12. Shri Sen contended that the goods are lying at the railway godown and they are incurring heavy demurrage and the respondents should be asked to store them in public warehouse. It shall be for the petitioner to make an application u/s 49 of the Customs Act, 1962 and thereafter it will be for the Assistant Collector to order the storage of the goods in question in a public warehouse or a private warehouse pending determination as to whether the goods have been legally imported or whether they are excisable to customs duty. We, however, direct that in case the petitioner makes an application u/s 49 the Assistant Collector shall decide the application without and delay.

13. The petition is disposed of accordingly. No order as to costs.

