
(1988) 02 BOM CK 0018
In the Bombay High Court
Case No : Appeal No. 33 of 1988

Reliance Industries Limited

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 19-02-1988

Acts Referred:

Customs Act, 1962 — Section 111, 130, 143, 47

Citation : (1990) 26 ECC 335 : (1988) 36 ELT 49

Hon'ble Judges : T.D. Sugla, J;R.A. Jahagirdar, J

Bench : Division Bench

Judgement

Jahagirdar, J.—This appeal has been preferred against the order dated 19th of November, 1987 of Sujata Manohar, J. dismissing the writ petition filed by the appellants (hereinafter referred to as "the petitioners") summarily, though by speaking order.

2. The petition challenges the legality of a notice dated 10th of February, 1987 issued by the Deputy Collector of Customs of Bombay, who has been joined as respondent No. 3 in the writ petition. Respondent Nos. 1 and 2 are the Union of India and the Collector of Customs respectively. The show cause notice is of nearly 33 pages which gives a detailed history of the facts and circumstances under which the 1st petitioner company, namely, Reliance Industries Ltd., of which the 2nd petitioner is the Principal Officer and the shareholder, imported equipment under import licences issued to them for setting up plant for the manufacture of polyester filament yarn (PFY). The facts leading the petition have been, with respect, ably summarised by the learned Single Judge. It is not necessary to mention the same again in details in this order. Briefly stated, the Reliance Industries Ltd., formerly known as Reliance Textile Industries, were given import licence for importing plant and equipment for the manufacture of PFY with an annual capacity of 10,000 M.T. The plant was to be established at Patalganga, a place in Raigad District. Subsequently, another import licence was given for importing further machinery with a capacity of 15,125 M.T. per annum.

With the import and the installation of the second set of machinery, for which valid import licence was given, the installed capacity of the plant would be 25,125 M.T. per annum of PFY. The petitioners contend that the import of the machinery was made in accordance with the import licences given by the Central Government and in accordance with the normal procedure under which they were cleared by the proper officer u/s 47 of the Customs Act, 1962. Import duty, however, was assessed provisionally and final assessment was to be made after reconciliation of all the items imported.

3. The show cause notice dated 10th of February, 1987 recalls these and other facts, but proceeds to point out that the officers of the Customs Department paid a visit to the plant at Patalganga and inspected the same in the presence of the officer of the 1st petitioner company. The show cause notice recalls that the import licences given to the 1st petitioner company were for plant and machinery which would have annual capacity of 25,125 M.T. of PFY. The figures of actual production are much above the installed capacity. This is established from the returns filed by the company with the Excise Department. Paragraph 17 of the show cause notice records that it had been found that the entire PFY plant-capacity, calculated in any of the ways, was more than 55,000 M.T. per annum which was more than double the declared licensed capacity. From this an inference has been drawn that equipment more than what is permitted under the import licence has been imported by the 1st petitioner company and, therefore, there is evasion of import duty. The total admitted invoice price of the plant having declared capacity of 25,125 M.T. per year was Rs. 61.47 crores. On this basis, the invoice price of the PFY plant having installed capacity of 55,440 M.T. per annum would be Rs. 122.94 crores. The show cause notice, therefore, alleges that there was a misdeclaration of the plant imported and says that total duty recoverable on the basis of calculations made in the show cause notice was Rs. 119.64 crores. It was also alleged in the show cause notice that the imported equipment is liable to be confiscated. The notice purports to take action u/s 111(d), (1) and (m) of the Customs Act, 1962, read with Section 3 of the Import and Export Control Act, 1947.

4. In reply to the show cause notice, the 1st petitioner company asked for inspection of bills of entry which had been given to the proper officer u/s 47 of the Customs Act. According to the 1st petitioner company, these bills of entry, if examined, would show that the proper officer has cleared the consignments from time to time after satisfying himself, as he ought to have done, that the consignments were imported in accordance with the import licence and the bills of entry. The respondents were unable to give inspection of all the bills of entry. Of 143 bills of entry, of which inspection was given, only 58 have inspection reports endorsed on the reverse.

5. The petitioners contend that once the goods have been cleared for home consumption by the proper officer u/s 47 of the Customs Act, it is no longer open to the respondents to contend that the goods which have been imported and

cleared by the proper officer are not the goods mentioned in the bills of entry and the relevant import licences. No action can be taken on the ground alleged by the respondents, because the action contemplated by the respondents precedes and does not follow the action of clearing of the goods made by the proper officer u/s 47 of the Customs Act. It is not necessary, at this stage, at this stage, to discuss the effect of the respondents' failure to give inspection of all the bills of entry in their possession. The question is said to be one of law, namely, whether, after the goods have been cleared for home consumption by the proper officer acting u/s 47 of the Customs Act, the goods can be said to be covered by the description contained in Section 111 of the Customs Act.

6. It was urged before the learned Single Judge that a Division Bench of this Court in *Union of India and others Vs. Popular Dyechem*, , has taken the view that once the goods have been cleared after verification and check u/s 47 for the Customs Act, there was no scope for issuing a show cause notice. Such a step would amount to revision of the order passed u/s 47 which can only be done u/s 130 of the Customs Act. This is also the view taken by the Delhi High Court in *Jain Sudh Vanaspati v. Union of India* 1982 E.L.T. 43.

7. The learned Single Judge thought that these and other decisions on the subject :-

"have no application to a provisional assessment and clearance such as the present one which has been granted under the Project Contract Regulations. By its very nature such assessment of goods is provisional."

So holding, the learned Single Judge dismissed the writ petition by her order dated 19th of November, 1987. This appeal is against the said order.

8. We have heard Mr. Nariman in support of the appeal and Mr. Andhyarujina for the respondents. They have taken us through all the relevant provisions of law and all the relevant documents which constitute the bulky paper book before us. Mr. Nariman urged that the learned Single Judge was in error in rejecting the petition in limine when the petitioners have made out a prima facie case of lack of jurisdiction on the part of the 3rd respondent while issuing the show cause notice. Mr. Andhyarujina, however, has pointed out that the notices is not without jurisdiction. The reliance place upon section 47 of the Customs Act by the petitioners is hopelessly misplaced as the goods have been imported pursuant to the contracts which have been registered under Project Imports (Registration of Contract) Regulations, 1985 and the clearance of goods has been made u/s 143 of the Customs Act. Continuity bonds have been executed by the petitioners. It is in this context, says Mr. Andhyarujina that the learned Single Judge has rightly held that the assessment and clearance of goods were provisional.

9. On the position which is alleged, namely, that the goods which have been assembled at Patalganaga are now of an installed capacity which is more than double the installed capacity envisaged under the import licence pursuant to which alone the goods could have been imported, one cannot say that the

following charge in the show cause notice is without any basis :-

"M/s. RIL, therefore, appear to have unauthorisedly imported 4 additional spinning machines with 32 positions having 8 ends per position in a clandestine manner and without payment of customs duty on these machines."

In view of this fact, the learned Single Judge rightly held that the judgment of the Division Bench of this Court in the case of Popular Dyechem was not relevant. If, admittedly, the goods had been cleared by the proper officer u/s 47 after following the procedure prescribed in that section and without the benefit being given to the petitioners of clearance u/s 143 of the Act, the judgment in Popular Dyechem's case might have been relevant.

10. After going through the entire show cause notice and the materials which have been shown to us, it is not possible for us to hold that the show cause notice is without jurisdiction which ought to be interfered with on a petition under Article 226 of the Constitution of India. The learned Single Judge, therefore, was justified in dismissing the petition.

11. The appeal is, therefore, dismissed.

12. The appellants given time to reply to the show cause notice upto 31st March, 1988.