

(1988) 06 BOM CK 0004

In the Bombay High Court

Case No : Writ Petition No. 2022 of 1986

Ricardson Hindustan Ltd.

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 28-06-1988

Acts Referred:

Citation : (1988) 3 BomCR 95 : (1989) 24 ECC 275 : (1988) 18 ECR 486 :
(1988) 37 ELT 496 : (1988) MhLj 802

Hon'ble Judges : Sujata Manohar, J

Bench : Single Bench

Advocate : A.H. Desai and F.H.J. Teleyarkhen, instructed by Bhogilal, Desai and Benjis, for the Appellant; J.P. Devadhar, for the Respondent

Judgement

Sujata Manohar, J.—Petitioners M/s. Richardson Hindustan Limited are engaged in the manufacture of various bulk drugs, Ayurvedic and other pharmaceutical formulations. The petitioners manufacture amongst other pharmaceutical products "Vicks Herbal throat drops" which contain medicinal properties having therapeutic value. These throat drops have been certified by the Food and Drug Administration, Maharashtra State as Ayurvedic medicine. For the purpose of excise duty the throat drops are classified under Medicaments used in Ayurvedic systems. The throat drops, therefore, have medicinal properties and are not sweets or confectionery.

2. The petitioners wanted to import a High Speed Automatic Wrapping Machine for wrapping these throat drops. Under Import/Export Policy for April 1985 to March 1988 capital goods which may be imported by eligible actual users under open General Licence subject to conditions applicable thereto, are listed in Appendix 1 Part B. Item 18(18) of Part B of Appendix 1 permits import by an actual user under open general licence of "High Speed Automatic Wrappers other than for safety Razor Blades, Cigarettes and Twist Wrappers for confectionery-of-maximum operating speeds above 120/ minute."

3. Under Appendix 6 categories of importers entitled to import under open

general licence, the items allowed to be imported by them under Open General Licence and the conditions governing such importation are set out. As per item 3 of Appendix 6, capital goods which are covered by Appendix 1 Part B can be imported only by actual users (Industrial and Non-Industrial). Clause 1 of conditions governing open general licence set out in Appendix 6 also says that importers importing capital goods as are covered under Open General Licence, shall be subject to "Actual User" condition.

4. Thus, import of High Speed Automatic Wrappers other than (inter alia) twist wrappers for confectionary could only be made under Open General Licence by an actual user. The petitioners desired to import a High Speed Automatic twist wrapper. This machine was required by them for wrapping herbal throat drops which are not confectionary. They, therefore, sought a clarification from the Joint Chief Controller of Imports and Exports by an application dated 2-5-1985 seeking a clarification as to whether they would be entitled to import such a machine under Item 18(18) of Appendix 1 Part B for their own use. The particulars regarding clarification sought set out that the words "other than for safety Razor Blades, Cigarettes and Twist Wrappers for confectionery" in Entry 18(18) indicated that a machine for Twist wrapping of confectionery was not allowed under OGL. Since the petitioner Company was a Pharmaceuticals Industry and the machine was required for medicated products they felt that they could import machinery under OGL.

5. The Joint Chief Controller of Imports and Exports by his letter dated 12-7-1985 addressed to the petitioner replied by clarifying that the machine would be covered under Entry 18(18) of Appendix 1 Part B. The petitioners thereupon imported such machine, which was imported under Airway Bill dated 23-2-1986. The petitioners filed the Bill of Entry on 5-3-1986 showing the goods imported under OGL. The petitioners however were served with a show cause notice dated 14-4-1986 to the effect that the import was illegal since the machine was designed for twist wrapping of sweetmeats and was excluded under Entry 18(18) Appendix 1 Part B. Thereafter the Collector of Customs has passed an order dated 20-5-1986 confiscating the machine and imposing a penalty of Rs. 1,00,000 which a redemption fine of Rs. 12 lacs. This order is challenged in the present writ petition.

6. The respondents are not contesting the factual position that the petitioners are in fact actually using this machine for twist wrapping throat drops. They contend however that under Entry 18(18) of Appendix 1 Part B twist wrappers which can be used for wrapping confectionery are excluded from Capital Goods which could be imported under OGL. The petitioners, on the other hand, contend that the words "twist wrappers for confectionery" do not refer to a general use to which the machine may be put. The words cannot actual use of the machine. If the machine is to be used by the actual user for wrapping confectionery, the machine cannot be imported under entry 18(18) of Appendix 1 Part B. If the machine is to be used for twist wrapping pharmaceuticals products, such a

machine can be imported under the said entry.

7. The contention of the petitioners appears to be justified. The entire emphasis under Appendix 1 Part B is on the import of Capital Goods by actual users. The actual user may be industrial or non industrial. Under Appendix 6 also, which lays down conditions for import of Capital Goods under OGL. The first condition relates to actual users importing Capital Goods under OGL and it says that such import shall be subject to Actual User condition. It further says that the Actual Users shall also ensure that their imports under OGL are strictly in accordance with their phased manufacturing programmes and the conditions of their industrial licences/registrations with the Sponsoring Authorities concerned. Therefore, the entries under Appendix 1 Part B are set out with reference to such end use. Entry 18(18) describes three end uses of such machine viz. (i) for wrapping safety razor blades, (ii) for wrapping cigarettes and (iii) Twist wrapping for confectionery. This has reference to the end use to which the machine will put but the actual user. Therefore, if the machine is used for twist wrapping of medicinal preparations, such machine is not covered by the exception under item 18(18). The same machine may be used by another manufacturer for twist wrapping for confectionery. If this is so, such a manufacturer of confectioner cannot import such machines under OGL for his own use. The petitioners, however, since they require this machine for wrapping herbal preparations, are eligible to import such machine under OGL.

8. In the case of Orissa Oil Industry Ltd. v. Collector of Customs, Calcutta, reported in (1985)5 Excise and Customs Cases 109 the Calcutta High Court was required to consider whether the imported goods fell under the category of "Components" or "Spares". The High Court said that this will have to be determined on the basis how the item was used by the actual user. The decisive factor to determine the nature and character of the item will be whether such item is used by the actual user as a component or as a spare. The same principle applies in the present case also. The import of a twist wrapping machine under OGL depends on its end use by the importer because the description in the entry in question is directly with reference to such end use by the actual user of that item.

9. Moreover, in the present case, the petitioners had sought a clarification from the Joint Chief Controller of Imports and Exports in this very connection before importing the machine. The Joint Chief Controller of Imports and Exports also clarified that the petitioners could import such machine for twist wrapping throat drops.

10. This interpretation cannot be challenged by the Customs Authority. In fact in the Hand Book of Import-Export Procedures 1985-1988, in paragraph 124, it has been stated : "As in the matters relating to import-export policy and procedure the interpretation given by the Chief Controller of Imports and Exports is final in case of doubt regarding these matters, the Customs Authorities should consult the Import Trade Control Authorities before clearance of the goods."

11. In the case of Lokash Chemical Works v. M.S. Mehta, Collector of Customs (Preventive), reported in 1981 E.L.T. 235 (Bom.) a learned Single Judge of this Court observed that interpretation of licensing policy was the function of the licensing authority. It was not for Customs Authorities to interpret the licensing policy. If the licensing authority interprets the policy one way and the Customs Authorities take a contrary view, there will be a conflict between two authorities, with the result that the reporter would be put to considerable inconvenience.

12. In the present case, Joint Chief Controller of Imports and Exports clarified the position before the petitioners imported the machine and it was on the strength of such clarification that the machine was imported. The Collector of Customs in his order has tried to find fault with this clarification by saying that from the application of the petitioners it is not clear whether they were importing the same machine which is used for wrapping confectionery or not. No such difficulty was however felt by the Joint Chief Controller of Imports and Exports. If he wanted any clarification he could have asked the petitioners. The clarification given by the Joint Chief Controller of Imports and Exports cannot, therefore, be brushed aside on such basis.

13. In the premises, the petition succeeds and the rule is made absolute in terms of prayers (a) and (b). Amount to be refunded within six weeks from today.

14. Respondents to pay to the petitioner costs of the petition.