(1988) 04 GUJ CK 0009

In the Gujarat High Court

Case No : Special Civil Application No''s. 399, 1055 and 1698 of 1988

Rupani Spinning Mills Pvt. Ltd. APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 19-04-1988

Acts Referred:

Customs Act, 1962 — Section 111, 112, 125, 24

Citation : (1992) 60 ELT 77 : (1988) 2 GLR 880

Hon'ble Judges : D.H. Shukla, J;A.M. Ahmadi, J

Bench : Division Bench

Advocate : M.R. Barot, for the Appellant; K.A. Mehta, S.C.G.S.C., B.B. Naik and J.D. Ajmera, Additional C.G.S.C., for the Respondent

Judgement

A.M. Ahmadi, J.—Rule. Mrs. Mehta waives service of rule on behalf of the respondents.

2. The two petitioning-Companies having textile units are actual users of synthetic rags used in the manufacture of shoddy yarn. In terms of the import policy for the years 1985-88 the petitioning-Companies were entitled to import such synthetic rags under an Open General Licence. The petitioning-Companies placed orders with foreign Companies for the supply of old completely pre-mutilated fumigated synthetic rags. As required by the import policy, the indents placed by the petitioning-Companies were registered with the Textile Commissioner, Bombay. In terms of the indents irrevocable letters of credit were opened, shipments were effected by the foreign suppliers and the description of the goods in the invoices as well as in other shipping documents was stated to be ''old completely pre-mutilated fumigated synthetic rags''. Bills of Entry were filed for clearance of the goods for home consumption. The description of the goods in the Bills of Entry was the same as found in the invoices and other documents. On arrival of the goods at the Kandla Port, they were examined and were found to be synthetic rags as declared. The authorities, however, found that since the condition of the synthetic rags did not comply with the requirements of Public

Notice No. 173 issued by the Principal Collector of Customs, Bombay, they could not be cleared as ''completely pre-mutilated''. In the case of the petitioner Rupani Spinning Mills Private Limited, the Collector of Customs held that the import was in violation of the provisions of the Customs Act and imposed fine and penalty including personal penalty. As the petitioner of the third petition, Swastika Woollen Industries Private Limited, was aware of this development, it sought an audience with the Collector of Customs and pointed out the practice prevailing in the Bombay Customs House which permitted clearance of such goods after they were cut into four pieces as ''completely pre-mutilated''. At the time when the petition was filed, no final decision was taken on the representation made by the petitioner but it appears that during the pendency of the petition, the Collector of Customs has by his order dated 30th March 1988 ordered confiscation u/s 111(d) and (m) of the Customs Act of the imported goods and has given an option to the petitioner u/s 125 of the said Act to pay a fine of Rs. 60,000/- in lieu of such confiscation within thirty days from the receipt of the order. The petitioner was also directed to pay duty as assessed in addition to the fine imposed in case the option was exercised. A penalty of Rs. 10,000/- was imposed u/s 112(a)(i) of the said Act and this was directed to be paid forthwith.

3. The petitioners contend that the conditions governing imports under Open General Licence are found in paragraph 37 which read as under :-

"37. (i) Import of woollen rags/shoddy wool/synthetic rags will be allowed only when those are imported in completely pre-mutilated condition. (i) Definition of woollen rags is as follows :-

(a) ''New'' - waste woollen cloth whether woven or knitted which is left after a garment has been cut out including genuine tailor cutting piece ends, discard pattern bunches and sample bits.

(b) ''Old'' - rags of woollen textile fabric including knitted and crocheted fabrics which are required for the manufacture of shoddy yarn and may consist of articles of furnishing or clothing so worn out, soiled or torn as to be beyond cleaning or repair.

(ii) xxx xxx (iii) the above definition alto apply mutatis mutandis to synthetic rags."

Reference may now be made to Section 24 of the Customs Act which reads as under :-

"24. Power to make rules for denaturing or mutilation of goods:- The Central Government may make rules for permitting at the request of the owner the denaturing or mutilation of imported goods which are ordinarily used for more than one purpose so as to render them unfit for one or more of such purposes; and where any goods are so denatured or mutilated they shall be chargeable to duty at such rate as would be applicable if the goods had been imported in the denatured or mutilated form."

Notwithstanding the said provision the petitioners contend that the Collector of Customs ordered confiscation of the imported goods u/s 111(d) and (m) of the Act. He gave an option to the petitioners to pay fine in lieu of confiscation and also imposed personal penalty u/s 112(a)(i) of the Act. In the case of the third petitioner, Swastika Woollen Industries Private Limited, the impugned order was passed during the pendency of the petition whereas in the first two petitions it was done before the filing of the petitions.

4. The Collector of Customs, Bombay, issued Public Notice No. 173, dated 13th December, 1985 laying down guidelines in pursuance of the policy for the period AM'' 88 providing for the import of woollen rags/synthetic rags under Open General Licence in completely pre-mutilated condition. Talcing note of the fact that mutilation of woollen rags/synthetic rags was done abroad with the help of cutting machines, chopping machines and punching machines while the same had to be done in our country manually, certain guidelines came to be laid down in paragraph 4 of the Public Notice insofar as mutilation by that method was concerned. It provided that in the case of coat, frock and other like body garments the cutting should result in making six pieces of the garment, the details regarding the nature of cutting having been stipulated. In the case of trousers and other like garments also, details regarding the nature of cutting are set out. It was further provided that any other serviceable article should be cut into four or five parts but not at seams or at stitchings. By a subsequent amendment dated 14th February 1986 it was provided that when the cutting results in making only four pieces of the garments, the garments will be accepted as properly pre-mutilated subject to the condition that it is rendered totally unserviceable. In regard to hosiery rags it is stipulated that it would be sufficient if they are cut into two pieces only but not at seams or at stitchings rendering it wholly unserviceable to the satisfaction of the concerned officer. In regard to mutilation by chopping machines it was stated that the importer should ensure that each garment was substantially damaged rendering it totally unfit for use as such. Similarly when mutilation was by punching machines, it was stipulated that the holes in the garments should be to such an extent that the entire piece of the garment was substantially damaged rendering it wholly unserviceable. The Collector of Customs, Rajkot, followed the guidelines set out in this Public Notice in the cases on hand and came to the conclusion that the synthetic rags could not be said to be completely pre-mutilated as they did not comply with the guidelines. The petitioners complain that in doing so, the Collector of Customs, Rajkot, omitted to bear in mind the amendment made in the Public Notice by the subsequent order of 14th February 1986. The petitioners challenge the legality, validity and propriety of the said Public Notice issued by the Principal Collector of Customs, Bombay. However, this challenge was given up at the hearing of the petitions. We are, therefore, not required to consider whether the guidelines issued under the Public Notice No. 173 of 13th December 1985 duly amended by the subsequent notice of 14th February 1986 are legally

unsustainable.

5. Mr. Barot, the learned advocate for the petitioners, confined his arguments to the limited question whether it was open to the importer to request the Collector of Customs at the relevant port to permit clearance of the goods after they were duly mutilated at the port as required by the guidelines contained in the Public Notice No. 173 dated 13th December 1985 as amended by the subsequent notice of 14th February 1986. In the foreign countries from where the synthetic rags are imported to India, the notion of mutilation is different from the guidelines laid down by the Public Notice No. 173 of 13th December 1985. He submitted that one or two cuts were considered enough by the foreign countries to describe the garments as completely mutilated whereas it was not so under the aforesaid guidelines. He further submitted that the cost of mutilation in foreign countries is very high and if mutilation as per guidelines is insisted upon, it would be well nigh impossible to import the garments for home consumption as the shoddy yarn manufactured therefrom would not be cost effective. In this connection he invited our attention to certain documents collectively produced at Annexure ''F'' to Special Civil Application No. 1698 of 1988. It is clear from these documents that if the garments are required to be mutilated as per the guidelines, the cost would be almost ten times. It is pointed out that each additional cut would incur an additional cost of 7 cents per kilogram which would place the garment out of reach as it would be possible to buy virgin fibre at that price. It must be remembered that the labour cost in those countries is very high and if mutilation is insisted upon as per the guidelines, the cost of the rags would be prohibitive. Mr. Barot, therefore, submitted and in our opinion rightly, that if the department insists on the synthetic rags being mutilated as per the guidelines before their arrival in India, it would be well nigh impossible for the petitioners to import the rags as the same would not be an economically viable proposition any more. He submitted that in that case the entire import policy would be rendered useless and would have to be abandoned. He, therefore, submitted that if the mutilation done by the suppliers is not to the satisfaction of the customs authorities, the proper course would be to mutilate the same at the port of import and thereafter release the goods. Such a course would be in consonance with Section 24 of the Customs Act reproduced earlier. We see considerable force in this line of reasoning. He further submitted that the procedure for lowed at the Bombay Port was to permit further mutilation of the rags, if the mutilation by the supplier did not satisfy the customs authorities, on payment of a token personal penalty. Insofar as the customs authorities at Delhi are concerned, in the absence of guidelines similar to Public Notice No. 173 of 13th December 1985, the authorities did not permit clearance unless the mutilation was to the satisfaction of the authorities. The matter was carried to the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi, by certain Textile Companies and the Tribunal held as under :-

"Even if it is felt that the mutilation is not sufficient, Customs authorities at Delhi could have ordered further mutilation on the analogy of Section 24 of the

Customs Act and on the basis of similar practice prevalent in the Bombay Customs referred to in the W.R.B''s Appeal Order No. 997-998/86-WRB, dated 22-8-1987 mentioned supra."

(vide typed copy of the order at Annexure ''G'' to the petition). He lastly submitted that the various orders collectively produced at Annexure ''G'' to the petition also go to show that the High Court of Bombay permits clearance as completely pre-mutilated if each garment is in four pieces. In such cases interim orders are issued directing the release of the goods on payment of fine and on compliance with the other legal formalities. He, therefore submitted that if the import policy is to be implemented, the procedure followed by the Bombay authorities should be followed by Kandla Port also. Mrs. Mehta, the learned Senior Central Government Standing Counsel, informs us that the Delhi Collectorate takes the view that the import is illegal as the goods cannot be said to be completely pre-mutilated. The Delhi Collectorate, therefore, passes orders for confiscation of the goods and fine or penalty in lieu of confiscation and also imposes personal penalty. On the other hand, the Bombay Collectorate adopts a procedure of permitting further mutilation of the goods on arrival to the satisfaction of the concerned authorities before clearance by imposing a personal penalty only. It may be realised that the practice followed by the Delhi Collectorate was not approved by the Appellate Tribunal as pointed out hereinabove. The Appellate Tribunal, Delhi thought that the procedure followed by the Bombay Customs of permitting further mutilation at the station of import should be adopted on the analogy of Section 24 of the Customs Act.

6. We have carefully considered the rival points of view and we are of the opinion that the procedure followed by the Bombay authorities is just and equitable and in keeping with the spirit of Section 24 of the Customs Act. Under the import policy, import of woollen rags and synthetic rags is permissible under an Open General Licence provided the rags are in completely pre-mutilated condition. The question then is, when can a consignment of such rags be said to be ''completely pre-mutilated'' for import purposes? The Principal Collector of Customs, Bombay issued guidelines in this behalf by Public Notice dated 13th December, 1985, whereby he stipulated the extent of mutilation required for import of such rags. By a subsequent amendment dated 14th February 1986 he modified the requirement set out in paragraph 4(a) of the Public Notice. New paragraph 4 of the Public Notice concerns cutting of garments manually and provides that coats, frocks and other body garments should be cut in six pieces. By the subsequent amendment it is provided that if the cutting results in four pieces, the garments will be accepted as properly pre-mutilated provided they are rendered totally unserviceable. It is presumably for this reason that the Bombay High Court is permitting clearance of garments by interim orders if they are cut in four pieces. That seems to be in keeping with the amendment to the Public Notice. We are, therefore, of the opinion that if a garment is cut into four pieces so as to render it totally unserviceable, it would suffice to bring it within the description of completely pre-mutilated garments. Whether the garments arc rendered wholly

un-serviceable would depend on the manner in which cuts arc effected. This would have to depend on the judgment or satisfaction of the Customs Officer on the spot.

7. The next question is : If the garments are not mutilated as above, can the customs authorities be directed to permit further mutilation at the station of import to render them wholly unserviceable before clearance. True it is that the garments must be ''completely pre-mutilated'' and ''totally unserviceable'' for import but as pointed out earlier, the notion of mutilation in foreign countries is different and if mutilation as per guidelines is insisted upon, the additional cost is likely to be prohibitive making it impossible to import the same. This is clear on a conjoint reading of the letters from foreign suppliers collectively produced at Annexure ''F'' in Special Civil Application No. 1698 of 1988. Therefore, if the import of such rags is to continue, a pragmatic approach is called for. Section 24 of the Customs Act provides the clue thereto. Under that provision the Central Government is empowered to make rules for permitting at the request of the owner mutilation of imported goods so as to render them unfit for use for a purpose other than the one for which they are imported. This is an enabling provision which indicates that Parliament had conceived of a situation where further mutilation on import may be necessary to render the material unfit for use for a purpose other than the one for which the same was imported. In the absence of rules and till such rules are framed, the spirit underlying this provision can be invoked by directing the customs authorities to permit further mutilation on import before clearance. As pointed out above, the customs officials at Bombay permit further mutilation at the importer''s cost and the official being satisfied that the garment is rendered totally unserviceable for any other purpose save and except the one for which it is imported, clearance is permitted on payment of personal penalty. We think this practice is in consonance with the spirit of Section 24 of the Customs Act and we commend it and direct the Customs Officials at Kandla to follow the same hereafter. We need hardly clarify that if the garment is cut into four pieces and if the official on the spot is satisfied that it is rendered totally unserviceable, he may permit clearance by imposing a personal penalty but if the garments are not cut in four pieces or if he thinks that they have not been rendered totally unserviceable, he should, at the expense of the importer, permit further mutilation till they are rendered wholly] unserviceable before permitting clearance on levy of personal penalty.

8. Now, out of the three petitions, so far as the first two petitions Nos. 399 and 1055 of 1988 are concerned, since the goods are cleared and are no more available for further mutilation, nothing further can be done and they must fail. Mr. Barot concedes this position. So far as the third petition No. 1698 of 1988 is concerned, since the goods are available for being dealt with to be rendered totally unserviceable and since the order of confiscation was passed pending the outcome of the petition, we set aside the order of confiscation and penalty in lieu thereof but not the personal penalty and direct the authorities to permit clearance on compliance with the directions given hereinabove which shall be

followed in future also. The rule is made absolute accordingly in Special Civil Application No. 1698 of 1988 only while it is discharged in the other two cases. Parties to bear their own costs in all the petitions.

