

(1991) 04 MAD CK 0081

In the Madras High Court

Case No : W.M.P. No's. 8728 to 8729/91 in Writ Petition No's. 5699 to 5701 of 1991

Shine Woollen Mills (P) Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 22-04-1991

Acts Referred:

Customs Act, 1962 — Section 24

Citation : (1994) 52 ECR 477 : (1992) 58 ELT 427

Hon'ble Judges : Kanakaraj, J

Bench : Single Bench

Advocate : A.G., for M/s E.S. Govindan and R. Sudhakar, for the Appellant; Mr. Srinivasamoorthi, Senior C.G.S.C., for the Respondent

Judgement

Kanakaraj, J.—These petitions coming on for hearing upon perusing the petitions and the respective affidavits filed in support of W.P. Nos. 5699 to 5701/91 and upon hearing the arguments of the Advocate General for M/s. E. S. Govindan and R. Sudhakar, Advocates for the petitioners in all the petitions and of Mr. Srinivasamoorthi Senior Central Government Standing Counsel on behalf of the respondents in all the petitions the court made the following order :-

The Writ petition is directed against the order of the Additional Collector of Customs made on 1-4-1991. It is not disputed that against the said order the petitioner has got a right to appeal. I am, therefore, not going into the points urged before me by way of final adjudication but I am only looking for a prima facie case in respect of the present W.M.P. seeking release of the goods. The petitioner had imported synthetic rags through the Tuticorin Port on 28-1-1991. The two grounds on which a show cause notice was issued to the petitioner are (1) the synthetic rags are not permitted to be imported through Tuticorin Port and (2) the synthetic rags imported had been mutilated only into two or three pieces and that the same is not in conformity with Public Notice No. 1/88 dated 6-6-1988. After getting the explanation, the Additional Collector held that the

goods are liable for confiscation and accordingly imposed a redemption fine of Rs. 1,58,000/-. He also directed the mutilation of that goods u/s 24 of the Customs Act, 1962 to satisfy the said Public Notice 1/88. He also imposed a personal penalty of Rs. 40,000/-.

2. Mr. Habibullah Basha, learned counsel for the petitioner has raised the following points.

(1) Even as per the impugned order, the petitioner is an eligible importer of synthetic rags. Therefore, imposition of personal penalty is not called for.

(2) The restriction on the port of import has been struck down by this Court and it is no longer open to the respondent to insist on that condition.

(3) So far as mutilation is concerned public notice 1/88 was with reference to the import-export policy for the period 88-91. There is no such notification in respect of 90-93 policy with which we are concerned.

3. Mr. Srinivasamoorthi, learned counsel for respondents 1 and 2 opposed the release of goods on the ground that in similar matters I had passed orders imposing certain conditions and the same conditions should be incorporated in any order of release.

4. So far as the points urged by Mr. Habibullah Basha, learned counsel for the petitioner is concerned, Mr. Srinivasamoorthi, learned counsel for respondents 1 and 2 seeks time to file counter affidavit. However, I am inclined to direct the release of the goods on certain conditions. So far as mutilation is concerned I find that the 1990-93 policy also says that rags required for the manufacture of shoddy yarn should be so worn-out, soiled or torn as to be beyond cleaning or repair. Therefore, even in the absence of any notification, the authorities are entitled to be satisfied on the nature of the goods. Regarding port of import this Court has struck down the condition. In this view of the matter, I direct the goods to be released on the following conditions :-

(1) Payment of admitted duty, if any.

(2) Payment of 25% of the redemption fine in cash.

(3) Furnishing of bank guarantee for another 25% of the redemption fine.

(4) Execution of a personal bond for the balance of 50% of the redemption fine.

(5) If the respondents are not satisfied with the mutilation of the goods, as such, they can insist on further mutilation upto a maximum of four pieces at the cost of the petitioner.

So far as the personal penalty is concerned it will not be taken into account until the final disposal of writ petition.

5. Post the writ petition for final disposal on 27-6-1991.