

(1982) 02 P&H CK 0043
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 1404 of 1980

Subhash Embroidery Works	Vs	APPELLANT
Union of India (UOI) and Another		RESPONDENT

Date of Decision : 23-02-1982

Acts Referred:

Customs Act, 1962 — Section 110, 111, 112, 11B, 11C
Imports and Exports (Control) Act, 1947 — Section 3

Citation : (1988) 33 ELT 267

Hon'ble Judges : J.M. Tandon, J

Bench : Single Bench

Advocate : U.S. Sahni, for the Appellant; Gopi Chand, for the Respondent

Final Decision : Dismissed

Judgement

J.M. Tandon, J.—This order will dispose of Civil Writ Petitions Nos. and 1650 of 1980 which relate to the same occurrence and in which common questions of law and fact are involved.

2. On April 6, 1973, a contingent of Headquarters Preventive Staff (Customs and Central Excise) searched the business premises of Messrs Subhash Embroidery Works, Maleri Street, Ludhiana, (petitioner in C.W.P. No. 1404 of 1980) as well as the residential premises of Subhash Chander, Proprietor of Subhash Embroidery Works situate at house No. 515, Chowk Neemwala, Ludhiana. As a result of these searches, synthetic fabrics bearing foreign markings were recovered from both places. Twenty-six pieces measuring 412.30 metres valued at Rs. 6,955/- were recovered from the business premises and nine pieces measuring 270 yards and 19 pieces of Saris (18 white and 1 blue) measuring 109.25 yards (total valued at Rs. 3,740/-) were recovered from the residential premises. The synthetic fabrics recovered were notified u/s 11B of the Customs Act, 1962, (hereafter the Act). Subhash Chander could not produce any evidence documentary or otherwise showing their lawful acquisition, possession or legal importation. The fabrics were seized u/s 110 of the Act. The Preventive Staff recorded the statements of

Subhash Chander and his brother Ashok Kumar at the time of the seizure of the fabrics wherein they admitted the recovery from their shop/residences and further stated that the same had been obtained for sale from some unknown persons who had not given any bill to them. They also stated that they had not filed any declaration in respect of these fabrics as required u/s 11C and further they have not maintained any account as required u/s 11E of the Act. The Deputy Collector Customs and Central Excise thereafter issued a show cause notice to the petitioner and vide order dated June 27, 1975, (Annexure P. 13) found the petitioner having contravened Sections 11D 11E and 11F of the Act read with Section 3(i) of the Import/Export (Control) Act, 1947. The goods seized were ordered to be confiscated u/s 111 of the Act and a penalty of Rs. 4,000/- was imposed on the petitioner u/s 112 of the Act. The petitioner feeling aggrieved by the order Annexure P. 13 filed an appeal which was dismissed by the Appellate Collector vide order dated February 17, 1976, (Annexure P. 14). The petitioner then filed a revision which was disposed of by the Joint Secretary to Government of India vide order dated April 7, 1980, (Annexure P. 15). The order confiscating the goods was maintained, but the penalty was reduced from Rs. 4,000/- to Rs. 2,000/-. The petitioner have assailed the orders Annexures P. 13, P. 14 and P. 15 in C.W.P. No. 1404 of 1980.

3. Prem Chand Kapur petitioner in C.W.P. No. 1650 of 1980 also filed an appeal against the order of the Deputy Collector Annexure P. 13 claiming that the fabrics other than 19 pieces of Saris belonged to him. His appeal as also the one filed by Messrs Subhash Embroidery Works was dismissed by the Appellate Authority by consolidated order dated February 17, 1976, (Annexure P.2). His revision as also that of Messrs Subhash Embroidery Works were disposed of by the Joint Secretary to the Government of India vide consolidated order dated April 7, 1980, (Annexure P.3). Prem Chand Kapur has assailed the action of the Customs Staff seizing the goods on April 6, 1973, and also the orders Annexures P.2 and P.3 in C.W.P. No. 1650 of 1980.

4. The learned counsel for the petitioners has argued that the Customs authorities have erred in placing the onus of proving that 19 pieces of Saris are not smuggled goods on Messrs Subhash Embroidery Works in spite of the fact that Saris are not covered by notification made under Sub-section (2) of Section 123 of the Act. The contention is fallacious and is without substance.

Section 123 of the Act reads :-

123. Burden of proof in certain cases. -

(1) Where any goods to which this section applies are seized under this Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be -

(a) in a case where such seizure is made from the possession of any person, -

(i) on the person from whose possession the goods were seized; and

(ii) if any person, other than the person from whose possession the goods were seized, claims to be the owner thereof, also, on such other person;

(b) in any other case, on the person, if any, who claims to be the owner of the goods so seized.

(2) This section shall apply to gold, diamonds, manufactures of gold or diamonds, watches, and any other class of goods which the Central Government may by notification in the Official Gazette specify."

5. It is admitted that fabrics are notified u/s 123(2) whereas Saris are not so notified. The point for consideration is if 19 pieces of Saris recovered from the residential premises are fabrics or are Saris. The Deputy Collector in the impugned order Annexure P. 13 has held that Sari pieces without fall, border or embroidery are as good as fabrics. The contention of the learned counsel for the petitioners is that pieces of the size of a Sari cut from the roll per se would convert the item from fabrics to Saris. The learned counsel for the respondents has contended that it is not so and reliance has been placed on *Lakshmiratan Cotton Mills Co. Ltd. v. Sales Tax Officer, Sector 11, Kanpur 1962 (13) S.T.C. 1031 KAN* and *Pravin Bros. Vs. The State of Gujarat*, .

6. In *Lakshmiratan's* case (supra) it has been held that where after cloth has been manufactured, something more is done to it by some other agency, which makes it into a different kind of product or makes it adaptable for a particular kind of use, it would cease to be "cloth" simpliciter and will have to be described by a different name. In *Pravin Brothers' case* (supra), it was held that there can be no doubt that pieces measuring five yards or three yards, either from malmal or voil cloth, would be cotton fabrics and merely because they are cut from takas, they would not cease to be cotton fabrics, as defined in Item No. 19 of the First Schedule to the Central Excise Act, 1944. The fact that they are so cut and are intended for use as saris also would not make any difference.

7. The fabric is a cloth whereas Sari is a wearing apparel. The Sari is, therefore, a distinct item from fabric. The cut of a roll of cloth in Sari lengths per se would not change the item from fabric to Sari. The pieces so cut would become Saris when something more like stitching, fixing of a fall, border or embroidery etc. is done to them. The Customs authorities have, therefore, rightly held that the 19 pieces of Saris recovered from the residential premises are fabrics and therefore, Section 123 of the Act is applicable thereto.

8. The learned counsel for the petitioner has argued that Prem Chand Kapur was the owner of the fabrics recovered from the business and residential premises and further some other persons had given Saris for embroidery which were recovered from the residential premises. The petitioner in C.W.P. No. 1404 of 1980 requested the Deputy Collector to summon those persons as witnesses. The Deputy Collector wrongly declined to summon them as defence witnesses and further directed the petitioner to make arrangement for their production. The petitioner (Subhash Chander) was thereby denied reasonable opportunity to

produce his defence. The impugned orders are liable to be quashed on that ground. Reliance has been placed on *Sita Ram Aggarwal v. The Union of India and Ors.* 1967 P.L.R. 160. This contention is also without merit. In the statement made by Subhash Chander immediately after the search of the business premises he stated that the items recovered had been purchased from some persons whose names he did not know. Ashok Kumar, brother of Subhash Chander in his separate statement stated that the items recovered from the residential premises had been left with him by somebody for sale whom he did not know. He further stated that his brother Subhash Chander also did not know that person. These statements were made on April 6, 1973. In reply to the show cause notice given by the counsel for Messrs Subhash Embroidery Works on June 13, 1974, the name of Prem Chand Kapur was mentioned for the first time. Thereafter an affidavit of Prem Chand Kapur was also produced before the Deputy Collector. The Deputy Collector has held that the items recovered were owned by Messrs Subhash Embroidery Works and Prem Chand Kapur and others were sought to be inducted at a very late stage with ulterior motives. The point for consideration is if in this background the decision of the Deputy Collector not to summon Prem Chand Kapur and others as defence witnesses would vitiate the enquiry proceedings or not? in my opinion, the non-summoning of the defence witnesses under the circumstances explained above would not vitiate the enquiry proceedings. For this reason, the ratio of *Sita Ram Aggarwal's* case (*supra*) cannot be made applicable to the instant case.

9. The Deputy Collector has found that the petitioner in C.W.P. No. 1404 of 1980 has contravened the provisions contained in Section 11D 11E and 11F of the Act. It is significant that for such contravention on the part of the petitioner, the statements of Prem Chand Kapur and others who were desired to be summoned as defence witnesses were hardly relevant. The petitioner nowhere stated that before acquiring the recovered items he had taken reasonable steps as specified by rules in this behalf. The petitioner was, therefore, rightly held to have contravened the provisions contained in Section 11D of the Act. Subhash Chander and Ashok Kumar have both stated in their statements recorded on April 6, 1973, that they had not entered the items recovered in the relevant registers. During enquiry they did produce some registers in support of their plea that the items recovered had been entered in the registers, but the Deputy Collector found that the entries were not genuine. The Deputy Collector was competent to record such finding and the same cannot be assailed in writ proceedings. The Deputy Collector consequently found the petitioner having contravened the provisions contained in Section 11E. For similar reasons, the petitioner was held guilty of having contravened the provisions contained in Section 11F. It will thus be seen that in the matter of finding by the Deputy Collector that the petitioner has contravened the provisions contained in Section 11D 11E and 11F the statements of Prem Chand Kapur and others even if recorded and whatever their statements could not have made any difference.

10. The case of Prem Chand Kapur in C.W.P. No. 1650 of 1980 is that he brought

certain pieces of fabrics from Moga for resale at the premises of Messrs Subhash Embroidery Works on April 5, 1973. He inadvertently forgot to bring the connected vouchers and cash memos in respect of the same. He left the fabrics in a gathri at the business premises of Messrs Subhash Embroidery Works and some pieces tied in a packet were left at their residential premises. He left for Moga to bring the vouchers. He returned to Ludhiana on April 7, 1973, and found that his packages had been seized by the Customs staff on April 6, 1973. He filed an appeal against the order of the Deputy Collector confiscating his fabrics which was dismissed. He then filed a revision which also met the same fate.

11. The learned counsel for Prem Chand Kapur has argued that the Deputy Collector having been informed that the fabrics belonged to the petitioner (Prem Chand Kapur) erred in not issuing a show cause notice to him and for this reason the impugned orders are liable to be quashed. I am not impressed by this contention. The Deputy Collector has given sound reasons for holding that Prem Chand Kapur was not the owner of the fabrics. Prem Chand Kapur learnt on April 7, 1973, that his fabrics had been seized. He did not file any claim. He remained quiet till the Deputy Collector confiscated the seized items. In view of the fact that the Deputy Collector came to the conclusion that the fabrics did not belong to Prem Chand Kapur, the question of issuing him a show cause notice did not arise.

12. In the result, both the writ petitions fail and are dismissed with costs.