
(2003) 11 BOM CK 0025

In the Bombay High Court

Case No : Writ Petition No's. 399 and 640 of 1990

Sunil Prints

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 12-11-2003

Acts Referred:

Imports and Exports (Control) Act, 1947 — Section 4I

Citation : (2004) 112 ECR 442 : (2004) 163 ELT 147

Hon'ble Judges : R.M.S. Khandeparkar, J;J.P. Devadhar, J

Bench : Division Bench

Advocate : V.S. Nankani, N.S. Thakkar and H.P. Modh, instructed by N.N. Gawankar, for the Appellant; R.V. Desai and S.V. Bharucha, for the Respondent

Final Decision : Allowed

Judgement

J.P. Devadhar, J.—Both these petitions arise out of a common order dated 28th December, 1989, passed by the Joint Chief Controller of Imports & Exports and hence both these petitions are being disposed of by this common judgment.

2. By the impugned order, the Joint Chief Controller of Imports & Exports has levied penalty under Sections 4-I(1)(a) & (c) of the Imports & Exports (Control) Act, 1947 and has also debarred the petitioners under Clauses 8(1)(b) and (d) of the Imports (Control) Order, 1955 for a period of five licensing years.

3. Facts in brief, are that the first petitioner as actual user issued a letter of authority to an export house M/s. Abdullabhai Abdul Kadar, Bombay, for the import of OGL items in terms of Para 119 of the Handbook of Procedures 1985-88. Acting upon the authority, the said export house opened L.C. with a bank for the import of OGL items. When the goods arrived at the Indian port the petitioners failed to honour the letter of authority, resulting into non-clearance of the goods and the documents from the bank. The bank thereupon initiated proceedings and after obtaining the necessary approval from the licensing authority, cleared the goods and sold the same to the actual user.

4. According to the respondents, failure on the part of the petitioners to clear the goods in spite of opening irrevocable L.C. was in violation of the provisions of the Imports & Exports (Control) Act, 1947, and the Imports (Control) Order, 1955. Accordingly, show cause notices were issued to the petitioners and by the impugned order penalty was levied against the petitioners and the petitioners were debarred from receiving any licences for five licensing years. Personal penalty of Rs. 50,000/- each was levied on Shri S.P. Jain who was partner in both the petitioner-firms. Challenging the said order, the present petitions are filed.

5. Learned Counsel appearing on behalf of the petitioners in the respective petitions submitted that due to search and seizure action by the Income Tax, authorities in 1986, the bank accounts of the petitioners were frozen. As a result, the petitioners had requested the export house to cancel the irrevocable L.C. However, the letter of authority holder failed to do so. The Counsel submitted that the petitioners have not committed any corrupt or fraudulent action and even if it is held that the petitioners are liable to pay the price in respect of the goods imported, it will be a civil liability and there being no offence committed within the scope and ambit of Section 4-I of the Imports & Exports (Control) Act, 1947, the penalty levied against the petitioners is liable to be quashed and set aside. The Counsel submitted that Section 4-I(1)(a) of the Imports & Exports (Control) Act, 1947 provides for penalty on any person who uses or utilises imported goods contrary to the licence conditions. In the present case, the petitioners have not imported the goods and even if the goods imported by the L.A. holder is considered to be the goods imported by the petitioners, even then, no penalty can be levied u/s 4-I(1)(a) because the said goods have been sold to the actual user as per the licence conditions and there is no violation of the licence conditions. It was submitted that Section 4-I(1)(c) provides for penalty on any person who makes, incorrect or false declaration for the purpose of obtaining a licence or letter of authority by amendment of any licence or allotment of any imported goods. It was submitted that in the instant case neither the petitioners have obtained any licence nor any letter of authority from the licensing authority. Consequently making any false declaration in that behalf did not arise at all. In this view of the matter, no penalty could be levied against the petitioners. As regards the debarment order is concerned, the Counsel submitted that in view of the change in the policy, nothing survives in the debarment order and as such no action can be taken in that regard.

6. Shri R.V. Desai, Senior Counsel, appearing on behalf of the respondents, submitted, that non-clearance of the imported goods even after opening the L.C. was a corrupt practice and punishable under the Imports & Exports (Control) Act, 1947. He submitted that in terms of Para 119 of the 1985-88 Handbook of Procedures, an OGL licence holder can effect import through agents appointed by him by issuing a letter of authority to open letter of credit, delivery and clearance thereof on behalf of the actual user. The violation of any of these conditions governing the said letter of authority entails debarment as well as for imposition of fiscal penalty.

7. We have heard learned Counsel on both sides. In the present case, no letter of authority, as contemplated u/s 2(h) of the Imports & Exports (Control) Act, 1947 has been issued by the licensing authority. In fact, in terms of Para 119 of the Handbook of Procedures 1985-88, the petitioners had authorised the export house to open a L.C. and make remittances on behalf of the petitioners for import of the OGL items. According to the petitioners they had requested the letter of authority holder to cancel the L.C. and not to import the goods. According to the petitioners, despite their objection, the L.A. holder imported the goods contrary to the instructions. If there is any inter se dispute between the petitioners and the export house, it was for them to resolve by initiating appropriate civil proceedings. u/s 4-I of the Imports & Exports (Control) Act, 1947, liability can be fastened only if the conditions set out therein are fulfilled. In the present case, on perusal of Section 44 of the Imports & Exports (Control) Act, 1947, it is seen that neither the petitioners had obtained any licence nor there is any mis-utilisation of the imported materials. As stated hereinabove, the goods allegedly imported for and on behalf, of the petitioners have been sold by the bank to the actual user and as such it cannot be said that there is any violation of Section 4-I(1)(a) of the Imports & Exports (Control) Act, 1947. Similarly, the petitioners have neither obtained any licence nor obtained any letter of authority, as contemplated u/s 2(h) of the Import (Control) Order, 1955. Similarly, there is neither amendment of the licence nor any declaration is made for the purpose of obtaining the letter of authority. In this view of the matter, none of the conditions set out in Section 4-I of the Imports & Exports (Control) Act, 1947 being satisfied, the imposition of penalty u/s 4-I was unjustified. For the same reasons the debarment order passed against the petitioners cannot be sustained. Moreover, in view of the changed policy provisions, the question of debarring the petitioners from receiving the licences at this stage does not arise. At the stage of admission the debarment order was stayed on the petitioners furnishing a bank guarantee.

8. For the aforesaid reasons, the impugned order is quashed and set aside. The rule is made, absolute with no order as to costs. The bank guarantee furnished by the petitioners stands discharged and shall be returned to the petitioners within four weeks from the date of the receipt of this order.