(1964) 10 P&H CK 0021

In the Punjab And Haryana At Chandigarh

Case No : Letter Patent Appeal No. 49-D of 1964

Union of India and Another APPELLANT

Vs

Basakha Singh and Co. Pvt. Ltd. RESPONDENT

Date of Decision : 08-10-1964

Acts Referred:

Imports and Exports (Control) Act, 1947 — Section 3
Sea Customs Act, 1878 — Section 167(8)

Citation : AIR 1965 P&H 181

Hon'ble Judges : P.C. Pandit, J;Mehar Singh, J

Bench : Division Bench

Judgement

P.C. Pandit, J.

(1) Messers. Basakha Singh and Company Pvt. Ltd., New Delhi, respondents are engaged in the business of importing arms and ammunition and are retail dealers in the same On 3-4-1957 they obtained a license from the Assistant Controller Import Trade for the import of firearms of the value of Rs. 11, 815 as specified in serial Nos. 312-16-IV of the Import Trade Control Schedule. On the basis of the license, they imported spare parts (actions, barrels and foreends)of 12-bore shot guns of the value of Rs. 10, 000 from Holland. On 11-3-1958 Messrs. Cox and Kings, Customs Clearing Agents, Delhi, presented a bill of entry on behalf of the respondent Company for clearance of this consignment. The Customs Authorities, however, withheld the goods which on examination were found to form complete 12-bore shot guns of the value of Rs. 10, 000 from Holland. On 11-3-1958 Messrs. Cox and Kings, Customs Clearing Agents, Delhi, presented a bill of entry on behalf of the respondent Company for clearance of this consignment. The Customs Authorities, however withheld the goods which on examination were found to form complete 12-bore shots guns except the butts and issued noticed to the respondent-company to the effect that the consignment was not covered by the import license. They were also required to so cause within 15 days as to taken against them under S. 167 (8) of the Sea Customs Act, 1878. In reply, the respondents Company stated that the import of the spare parts of 12-bore shot

guns was not prohibited and, as a matter of fact a similar consignment has been previously imported by them on the basis of that very license. This contention of theirs did not prevail with the Collector of Central Excise and 12-bore shot guns and there spare parts was banned and was not covered by the import license produced by the respondent-company, the goods in question were liable to confiscation under S. 167 (8) of S. 3 of the Imports and Exports (Control) Act,. He accordingly, ordered there absolute confiscation under the aforesaid section.

(2) On appeal the Central Board of Revenue found no justification to interfere with the Collector''s order and held and "the import of 12-bore shot guns was completely banned during the material period and if the spare parts thereof were allowed to be imported, it would amount to the negation of the Government''s avowed policy. " A revision petition against this order was also dismissed by the Central Government 22-2-1961.

(3) Against this, the respondent-company, filled a writ petition in this Court on 14-3-1961 and the same was accepted by D. K. Mahajan J. The learned Judge held that on any reasonable construction of item No. 314 and clause (d) in the remarks column of the Import Policy Schedule it could not be said that the respondent-Company was not within their rights to import barrels and action of 12-bore shot guns. as a result the order confiscating the goods imported by the respondent Company passed by the Customs Authorities was quashed. Against this decision the present appeal under clause 10 of the Letters Patent has been filed by the Union of India and the Collector of Central Excise and Land Customs, New Delhi.

(4) Learned counsel for the appellant submitted that the learned single Judge has no properly construed item No. 314 of the Import Trade Control Schedule. According to this item, the import of 12-bore shot guns and their spare parts was totally banned during the relevant period. The learned single Judge according to the counsel had failed to notice that on examination the goods in question has been found by the Customs Authorities to the complete 12-bore guns except the butts. that beings the question as to whether the spare parts of such guns has been prohibited. It was further contended had it was primarily for the Customs Authorities to construe the various items of the Import Trade Control Schedule and that unless the Court came to the conclusion that the interpretation of those items this Court to interfere with their decisions in writ proceedings. The learned single Judge was, therefore in error in interfering with the order of the Customs Authorities. The spare parts imported by the petitioner were just in the proportion in which they would be required for the assembling of the complete 12-bore shot guns and this was done clearly to circumvent the law and the absolute prohibition imposed by the Government on the import of the 12-bore shot guns. Under these circumstances, they were not entitles to invoke the extraordinary jurisdiction of this Court because this action on their part was clearly mal fide. There was no error much less an apparent one, to entitle them to question the orders of the Customs Authorities.

Learned counsel for the respondent on the other hand, contended that the respondent-Company had not imported complete 12-bore shot guns. The wooden butts and the wooden parts of the fore-end had not been imported and without them, these could not be called complete guns. Learned counsel also arranged that the Collector of Customs was himself doubtful if the import of the spare parts of 12-bore shot guns was banned and he therefore, made a reference to the Chief Controller of Imports and Exports for clarification. It was only when the latter informed him that the import of 12-bore shot guns in any form with chambers of any other bore and spare parts of 12-bore shot guns was not allowed, that he passed the impugned order, Under these circumstances, it was not his own, independent decision and the same was, therefore liable to be set aside in writ proceedings. Besides, if there was any doubt regarding this matter, the benefit of the same should have been given to the respondent-Company, since their property was going to be confiscated.

It was further contended that the Customs Authorities had on a previous occasion shortly before the present consignment was imported under this very license, allowed the respondent to import similar barrels and actions in equal numbers of the value ? 83 from Spain. In view of this they could not be allowed to change there mind and confiscate the present goods. Reliance for this submission was placed on a Single Bench decision of the Calcutta High Court in Mercantile Express Co. Ltd. Vs. Assistant Collector of Customs and Others, . Lastly it was argued that the respondent-Company was prepared to undertake and execute a bond before the collector and the Central Board of Revenue to guarantee that the parts imported by them would be sold as "spare parts only" and not as complete guns. The Customs Authorities however did not agree to this also. That being so the order confiscation their goods was contrary to law.

(5) The respondent-Company has been granted a license for the import of firearms covered by items No. 312 to 316 of the Import Trade Control Schedule. These items are as follows:

Part and S. No. of I. T. C. Schedule. Description. Licensing Authority Policy for Established Importers. Validity of Licencing. Remarks

312. Save where otherwise specified, all articles which are arms or parts of arms within the meaning 40% of the Indian Arms Act 1878 (excluding springs used for air guns) all tools used for cleaning or putting together the same, all machines for making loading, closing, or capping cartridges for arms other than rifle arms and all other orts of ammunition and military stores and any articles which the Central Government may by Notification in the Official Gazette declare to be ammunition or military stores for the purpose of the Indian Tariff Act, 1934 excluding rercussion caps Ports. Nine Months. (a) Licences will be granted only to holders of licences (including import licences) under the Indian Arms Act and Rules. The applicants should, however, produce along with their applications certificate in original from the District Magistrate Superintendent of Police or Commissioner of Police of the District to show that the firm is authorised to

import and deal in Arms under the India Arms Act and Rules

313 Subject to the exemptions specified in Item No. 80(3) of the First Schedule to the Indian Tariff Act, 1934; Fire arms including gas and air rifles and gas and air pistols not otherwise specified but excluding parts and accessories thereof.

314 Subject to the exemptions specified in Item No. 80(3) of the First Schedule to the Indian Tariff Act, 1934, (b) Quota will be calculated on the basis of imports of all articles falling under serial numbers 312, 313, 314 and 316 of Part IV.

(a) Barrels, whether single or double for firearms including gas and air guns, gas and air rifles and gas and air pistols, not otherwise specified

(b) Mainsprings and magzine springs for fire arms, including gas guns, gas rifles and gas pistols (c) Licences will also be Subject to the condition that the firearms or arrival will not be disposed of except in accordance with the instructions to be given by the Government of the State in which the importer is carrying on his business.

(c) gunstocks and breech blocks

(d) Bevolver cylinders.

(e) Actions (including skeleton and waster), breech bolts and their heads, cocking pieces, and locks for muzzle loading arms.

(f) Machines for making, loading, or closing cartridge for rifles arms.

(g) Machines for capping cartiridges for rifles arms.

315 The following arms, ammunition and military stores:-- (d)Licenses for Sr. Nos. 312, 313, 314, 315, 316 of part IV will not be valid for import of 12 bore shot guns-single or double barrel, ejector or non-ejector types. Single and double barrel and ejector or non-ejector type shot guns having chamber of 16 bore but having barrels of 12 bore and which can be converted into 12 bore shot guns will not be allowed to be imported.

(a) Arms forming part of the regular equipment of a commissioned or gazetted officer in Government Service entitled to wear Diplomatic, Military, Naval, Air Force or police uniform. (e) Licenses for S. Nos. 312-316 of part IV will not ordinarily be valid for import of ''machines for making, loading or closing cartridges for rifles arms and machines for capping cartridges for rifled arms'' unless the application is accompanied by the license granted in form I under the India Arms Rules.

(b) A revolver and an automatic pistol and ammunition for such revolver and pistol up to a maximum of 100 rounds per revolver or pistol (i) when accompanying a Commissioned officer of the Indian regular forces, or of the Indian Territorial Force or gazetted Police Officer, or (ii) certified by the Commandant of the corps to which such officer belongs; or is the case of an officer not attached to any corps, by the officer commanding; the station or district in which such officer is serving, or in the case of a police officer by an Inspector General or Commissioner of Police, to be imported by the officer for the purpose of his equipment.

(c) Swords for presentation as army or volunteer Prizes.

(d) Arms, ammunition, and military stores imported with the sanction of the Central Government for use of any portion of the military forces of a State in India being a unit notified in pursuance of the First Schedule to the Indian Extradition Act, 1903.

(e) Morris tubes and patent ammunition imported by officers commanding India Regiments or volunteer corps for the instruction of their men.

316 Ornamental Arms of an obsolete pattern possessing only and antiquarian value; masonic and theatrical and fancy dress swords, provided they are virtually use less for offensive or defensive purposes and dahs intended exclusively for domestic, agricultural and industrial purposes.

(6) It is common that according to clause (d) of the remarks column, reproduced above the import of 12-bore shot guns was prohibited. The Customs Authorities as is apparent from the order of the Collector of Central Excise and Land Customs, examined the goods in question and found them to be complete 12-bore shot guns except the butts. It is undisputed that equal number of barrels, actions and fore ends of 12-bore shot guns imported by the respondent-Company. A sample of these three articles was produced before us and when joined together, it was substantially a 12-bore shot gun, excluding of course the wooden butt. The Customs Authorities were therefore right in saying that the goods in dispute formed complete 12-bore shot guns. That being so, these goods would not have been imported and were, therefore liable to confiscation This aspect of the matter, if I may say so with great respect, has been overlooked by the learned single Judge. The writ petition filed by the respondent-Company should have been dismissed on this short ground alone.

(7) Now, coming to the second question as to whether the import of the spare parts of 12-bore shot guns was banned or not there is difference of opinion between both the parties. The Collector of Customs however has found that the import of these parts is banned. The Central board of Revenue has confirmed this finding and has further added that the import of 12-bore shot guns was completely prohibited during the relevant period and if the spare parts thereof were allowed to be imported, it would obviously defeat the Government''s policy. Such was the view of the Customs Authorities. Looking at the items, referred to above it would be seen that it has been clearly stated in clause (d) in the remarks column that the licenses for Serial Nos. 312 and 316 will not be valid for the import of 12-bore shot guns.

In case this clause had not been there then it is common ground that the respondent-Company could have imported under this item. Under item No. 314, however certain spare parts only have been allowed to be imported under this item Under item No. 314 however certain spare parts only have been allowed to be imported and barrels and actions are also mentioned therein. Therefore, barrels and action of 12-bore short guns could have been imported under item No. 313, if this clause (d) was not there in the remarks column. In case the intention of the Legislature was to ban the import of 12-bore shot guns only and not their spare parts, then the mention of the item No. 313 in Clause (d) was quite sufficient and there was no necessity of introducing item No. 314 therein. The very fact that item No. 314 finds place in clause (d) of the remarks column, shows that the intention of the Legislature was clear that even the spare parts of the 12-bore shot guns should not be imported.

The learned single Judge has held that as it was not stated either in clause (d) or in item No. 314 that the spare parts of the 12-bore shot guns were also not to be imported, as was done in the case of springs used for air guns in item No. 312 and accessories and parts of firearms specified in item No. 313, therefore, it could not be said that the import of spare parts of 12-bore shot guns was also prohibited. In my opinion, however, it was not necessary to do so, because this object has been achieved by the mention of item No. 314 in clause (d) of the remarks column. therefore, agreeing with the Customs Authorities and with great respect to the learned Judge, I would hold that the import of the spare parts of 12-bore shot guns was also banned.

(8) As regards the contention of the learned counsel for the respondent that the Collector of Customer was himself doubtful, about the question as to whether the spare parts of 12-bore shot guns could be imported or not and he had, therefore, made a reference to the Chief Controller of Imports and Exports for clarification and it was only after he had been informed by the latter that these spare parts were banned that he passed the impugned order and under these circumstances, it was not the Collector''s own independent decision and the same was liable to be quashed, in my opinion, there is no substance in the same. In the first place, this point was not argued before the learned single Judge and cannot, therefore, be taken up for the first time in the Letter Patent appeal. Secondly, if a doubt had, in fact, arisen in his mind and that Collector had, therefore, sought clarification from the Department concerned, there is no harm in doing so. As a matter of fact, as a result of this reference, his own opinion about this matter was confirmed by the communication received from the Chief Controller of Exports and Imports and it is only then that he passed the impugned order. Thirdly, the Central Board of Revenue has also considered the matter and given its own independent decision while confirming the order of the Collector. Fourthly, no objection on this score was taken either before the Collector or before the Appellate Authority, namely, the Central Board of Revenue, or before the Central Government in revision.

(9) So far as the argument of the learned counsel for the respondent that the Customs Authorities had, shortly before the present consignment was imported,

allowed the respondent to import similar barrels and actions from Spain and; consequently, they could not be allowed to change their mind and confiscate the present goods, is concerned, in my view, there is no merit in the same. Firstly, this point again was not argued before the learned single Judge and, therefore, the same cannot be permitted to be taken up for the first time in the Letters Patent appeal. Secondly, this averment of the respondent in para 5 of the writ petition was denied by the appellants in their return, where it was clearly stated by them that the spare parts imported earlier by the respondent-company vide bill of entry No. 6575, dated 19-12-1957 were not of 12-bore shot guns and, thus, had no similarity with the goods subsequently imported by them. It was further stated that the records of identical goods by the respondent-Company as alleged by them.

Under these circumstances, it could not be said that the goods previously imported by the respondent-Company were the spare parts of 12-bore shot guns. Learned counsel for the respondent, however, submitted that they had, no 17-4-1958 in reply to the show-cause notice, produced before the Collector of Customs certain documents to show that a similar consignment had been previously imported by them on the basis of their license and those documents were not being produced by the Government. Learned counsel for the State argued that it was clear from para 4 of the reply of the respondent-Company to the show-cause notice (annexure ''D'' to the writ petition) that, according to the Company itself, the size of the bore was not given on the invoice of the previous consignment and, according to the learned counsel, that might have been the reason why the previous goods were all allowed to pass through the Customs barriers without any objection. In order to overcome this objection, the respondent-Company, it appeared later on obtained a letter from their shippers to the effect that those spare parts were also meant for 12-bore shot guns. This letter which was subsequently got was not therefore, relied upon by the customs Authorities and the same must be deemed to have been rejected by implication by them. Thirdly, even assuming for the sake of argument that the respondent-Company had previously by mistake been allowed to import spare parts of 12-bore shot guns, it could not give them a statutory right to import similar material for the second tome as well, when I have already held that the importation of such goods was prohibited under the Calcutta decision relied upon by the learned counsel it may be stated that the same is distinguishable on facts. No decision as such was given by the Customs Authorities allowing the respondent-Company to import the spare parts of 12-bore shot guns on the previous occasion.

(10) As regards the last argument raised by the learned counsel for the respondent, that the respondent-Company was prepared to give a guarantee to the effect that goods in question would be sold as spare parts only and noas complete guns, there is no force in the same, because it has already been held by me that the import of such spare parts was completely banned. That being so, the questions of the giving a guarantee for their being sold as spare parts dose not arise.

(11)Before parting with this case, I may, however, mention that even assuming for the sake of argument that an item in the Import Trade Control Schdle was capable of two interpretations, then the one taken by the Customs Authorities, which had the exclusive jurisdiction to decide this matter, should prevail and the same could not be interfered with in writ proceedings.

(12) In view of what I have said above, this appeal is accepted, the judgment of the learned single Judge is set aside and the writ petition filed by the respondent-company is dismissed. In the circumstances of this case, however, I will leave the parties to bear their own costs.

Meher Singh, J.

(13) I agree.

(14) Appeal allowed.

