

Messrs. Bharat Barrel and Drum Mfg., Co.

Vs

The Collector of Customs, Bombay and another

Civil Appeals Nos. 2445-2450 of 1966

(CJI J. C. Shah, S. K. Hegde, A. N. Grover JJ)

06.01.1971

JUDGMENT

SHAH, C. J. -

1. These six appeals arise out of orders passed by the Central Government in a group of revision applications against the orders passed by the Collector of Customs, Bombay, and confirmed by the Central Board of Excise and Customs subject to certain modifications.
2. The appellant is a private limited company which carries on the business of manufacturing drums and barrels. For its manufacturing programme the appellant obtained in June, 1962 two licences for importing steel sheets. Under the first licence the appellant was authorised to import "Mild Steel Item-18-G Black Plain Sheets Drum Quality for manufacturing drums and containers," subject to the terms and conditions detailed in the annexures thereto. The total C.I.F. value of the licence was Rs. 40,00,000/-. The second licence was for "Steel Drum Sheets for Lubricating Oil Packing" of the total C.I.F. value of Rs. 50,30,000/-.
3. The appellant placed orders for import of steel sheets with a firm of manufacturers in the United States of America. The goods under the two licences reached the Bombay Port in twelve separate consignments. On arrival of the consignments, the appellant filed Bills of Entry for consumption of the goods. The Chief Customs Appraiser at Bombay did not allow clearance of the goods for the following reasons by him :
 - (a) that under the Import licence the appellants were entitled to import only prime quality sheets and no other sheets;
 - (b) that the quality of the sheets imported by the appellants appeared to be industrial scrap (sheet cuttings);
 - (c) that the sizes of the Steel Sheets appeared to be odd and not regular; and
 - (d) that the value of the invoices was not according to the prevailing prices for steel sheets in prime quality.

To avoid liability for heavy demurrage the appellant-Company applied for and obtained an order for clearance of the goods lying in dock. A show cause notice was issued by the Collector of Customs requiring the appellant to show cause why the sheets imported by not forfeited. The appellant-Company represented that it was engaged in the manufacture of drums and containers of various

sizes and that although the sizes of Steel sheets appeared to be odd, these were suitable for its manufacturing purposes. The Company also pleaded that the sizes of sheets imported were not Industrial Scrap (sheet cutting) in terms of the definition of Industrial Scrap in the Iron and Steel Controller's Circular No. SIB/1/67/AS/60, dated July 15, 1963, and that in any event the licence did not lay down any definite quality of steel sheets to be imported.

4. The Collector rejected the representation made by the appellants. In his view the licence issued in the case was for "Prime Quality" sheets and the term "Prime Quality" meant that the sheets were of standard sizes and lengths, with uniform dimensions and without surface defects, but in the sheets imported there was "a percentage of defective sheets with clipped edges, surface grooves, sheering imperfections etc., and the bulk of the sheets were of varying sizes and dimensions". On that account the sheets were not of 'prime quality', that the explanation of the Company was not satisfactory, and since the importers had no valid licence for importing the sheets actually imported, the importation was in contravention of the Import Control Order No. 17/55 of December 7, 1955 issued under Section 3 of the Imports and Exports (Control) Act, 1947, and punishable under Section 111 of the Customs Act, 1961. The Collector on that view passed an order imposing penalties for different amounts in respect of each of the consignments. The Company preferred appeals to the Central Board of Excise and Customs against the order passed by the Collector imposing penalties for importing twelve consignments. The Board held that only those sheets could be imported against the licences which fulfilled two conditions : (1) the sheets were suitable for manufacturing drums and (2) they were of "prime quality" material. The Board did not agree with the argument advanced on behalf of the appellant-Company that the sheets were of drum quality and were permitted to be imported against the two import licences. The Board observed that the sheets imported varied in sizes and gauges in some packages; that while "certain sheets were of uniform size (i.e., length and width at both ends) the other sheets were of irregular shapes"; that gauges of sheets in some of the consignments varied between 11 and 13 and in others they varied between 18 and 24; that defects such as clipped edges, surface grooves and sheering imperfections were noticed in some sheets and that the examination report indicated that not only the sheets were not of "prime quality" but they were also unsuitable for the manufacture of drums, specially those which were of 11, 12 and 13 gauges. The Board rejected the contention of counsel for the appellants that the percentage of sheets of odd sizes and gauges 11, 12 and 13 was negligible and the presence of a small percentage of the consignment was "not representative of the nature" of the entirety of the sheets imported, and observed that even allowing "tolerances generally allowed in measurement of the sheets", all the sheets cannot be considered as of standard sizes, and in any case the fact remained that the sheets imported were not of uniform dimensions in "each skid" and on that account not of "prime quality", and not suitable for manufacturing drums. The Board accordingly upheld the action of the Collector in confiscating the goods but they reduced the fine in some cases.

5. Interrupting the narrative, it is necessary to point out at this stage two important matters : (1) that the difference in the conditions of the two licences was apparently not noticed by the Collector of Customs and by the Board and (2) that the condition that the goods should be of "prime quality" was not a condition of either licence. Under the first licence the sheets were to be of 18 gauge quality; under the second licence there was no such condition relating to thickness of the sheets. There was again no evidence that any part of the consignment was not fit for use in the manufacture of drums and barrels. By importing sheets of 11, 12 and 13 gauge or of gauges varying between 18 and 24 no breach of the conditions of the second licence was committed. The condition that the sheets imported must be of "prime quality" was imposed for the first time by the Iron and Steel Controller's Public Notice No. I/I-S/62, dated December 6, 1962 and could not obviously apply to the sheets imported under the two licences which were issued earlier. But the Collector as well as

the Central Board of Excise and Customs decided the cases principally on the ground that the goods were not of "prime quality". The Collector of Customs and the Central Board of Excise and Customs also did not keep the facts in respect of the twelve consignments distinct and decided them together as if there was no difference between the conditions of the two licences.

6. The revision applications filed before the Government of India were consolidated for the purpose of hearing and a single order was passed. The Officer who heard the revision applications on behalf of the Central Government was of the view, and rightly, that the Public Notice No. I/I-S/62, dated December 6, 1962 of the Iron and Steel Controller had no retrospective operation and the condition of "prime quality" could not be applied to the sheets imported under the licences issued before that date. But in his view, one of the two licences e.g. licence, dated June 13, 1962, covering the consignments was issued specifically for 18 gauge sheets, while sheets of different sizes (including 18 gauge) were imported against that licence and on that account consignments covered by that licence "had to be treated as unauthorised". He then proceeded to observe that the fine in lieu of confiscation of the goods covered by the Collector of Customs, Bombay Orders Nos. S/10-530/63-LC, S/10-531/63-LC, S/10-532/63-LC, S/10-533/63-LC, S/10-534/63-LC, and S/10-535/63-LC all, dated November 30, 1963, be remitted in full; that in respect of four consignments covered by the Collector's Orders Nos. S/10-443-LC, S/-444-LC, S/- and S/-446-LC all, dated October 5, 1963, the five be reduced by half; and that the fines reduced by the Board in the cases covered by the Collector's Orders Nos. S/10-22/64-LC and S/10-71/64-LC both, dated March 2, 1964, be further reduced as decided by them.

7. These six appeals relate to the orders made by the Government of India in respect of those consignments covered by the order in which the fines were not remitted in full. The order of the Collector of Customs proceeded principally upon the ground that the sheets imported were not of "prime quality". Whether the sheets imported were not according to the conditions of the licence because they did not comply with the condition as to the size and gauge subject to the permissible tolerance was apparently not investigated by the Collector. The Board also did not investigate that question. In six orders passed by the Collector Nos. S/10-443/63-LC, S/10-444/63-LC, S/10-445/63-LC and S/10-446/63-LC, dated October 5, 1963, the only ground given is that the goods were not of "prime quality". That conclusion was reached by him because "the materials were not of standard size, the dimensions were not uniform, the sheets were with surface defects and that a percentage of defective sheets had not only clipped edges, surface grooves, sheering imperfections but that the bulk of the sheets were of varying sizes and dimensions". All the defects in the view of the Collector justified the opinion that the sheets were not of "prime quality". He did not consider whether the goods imported were of 18 gauge size. Since the condition as to "prime quality" was imposed for the first time on December 6, 1962 the orders of the Collector were not sustainable.

8. In respect of the Orders Nos. S/10-22/64-LC and S/10-71/64-LC, dated March 2, 1964, the Collector observed that on examination of the goods in question the sheets were in random sizes of 19 and 20 gauge not permissible under the licence. He also observed that the licence issued in this case was valid for the "prime quality" sheets of 18 gauge only, and since the sheets imported were of varying sizes, with surface defects and of different gauges, the sheets were not of "prime quality" and were, therefore, not covered by the licence obtained by the Company. The basis of the judgment of the Collector in these cases also, was that the goods were not of "prime quality".

9. The Central Board of Excise and Customs also did not deal with the different consignments separately and did not apparently consider whether on the ground that some sheets were not of the permitted gauge under the first licence the import may be regarded as unauthorised.

10. We are of the view that there was no proper investigation of the dispute by the Collector of Customs and the Central Board of Excise and Customs. We are also of the view that in view of the infirmities disclosed in the orders made by the departmental authorities the Central Government in revision should have proceeded to consider the merits of the appeals relating to the six consignments in respect of which fine was not remitted in full. The Government should have given to the appellants adequate opportunity to prove that there had been no substantial deviation from the terms of the licence or for other reasons on which they claimed that the fine may be remitted in full.

11. On behalf of the company it was urged that since the order of the Collector and the Central Board of Excise and Customs proceeded solely upon the finding that the consignments imported were not of "prime quality" and on no other ground in respect of four consignments we should not remand the cases dealt with under order, dated October 5, 1963 and that we should set aside the order of the Central Government in respect of those four consignments and remit the fine in its entirety, leaving the Central Government free to hold an inquiry only with regard to the remaining two consignments covered by the Collector's Orders Nos. S/10-22/64-LC and S/10-71/64-LC, dated March 2, 1964. For reasons already set out we do not feel justified in accepting that contention.

12. We set aside the order passed by the Central Government in respect of the six orders passed by the Collector, where fine has not been remitted in its entirety and direct that the Central Government do consider the revision applications on their merit. If the appellant desire to lead additional evidence to prove that the goods or a substantial part of the goods imported under the various consignments were subject to "the permissible tolerance" according to the terms of the licence, or for any other reason, the Central Government will give it an opportunity to do so. The inquiry will, however, be restricted to the question whether the consignments in respect of which fine has been imposed did or did not comply with the condition in the licence of the specification "subject to the permissible tolerance" relating to 18 gauge.

13. The order passed by the Central Government is set aside in these six appeals and the cases are remanded for disposal according to law. There will be no order as to costs in these appeals.

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