Collector Of Customs

v.

Swastika Woollen Industries

(Supreme Court Of India)

HON'BLE JUSTICE SABYASACHI MUKHERJEA (CJI) HON'BLE JUSTICE M.M. PUNCHI

C. A. No. 933 of 1990 - 65 of 1990, dated 19-3-1990 [6] | 19-03-1990

These are appeals from the order of the tribunal. We have examined the findings of the Tribunal.

The question in each case is whether at the time of entry of the goods these were in such condition as to be entitled to the benefit of the notification of the licence policy and whether these were in pre-mutilated rags, these should be found at the time of entry of the goods in the country. Therefore, when these cross the Customs barriers whether they are in such a stage is the question. What is subsequently done and how they are dealt with, whether this could be used as a finished product, all these are not relevant considerations. The tribunal, as is apparent from the following paragraph found as follows :-

"We have carefully considered the pleas advanced on both sides. We find that there is sufficient distinction between the cases of imports at Bombay and Kandla as came to notice in the case of M/s. Rupani Spinning Mills Pvt. Ltd. and the imports at Delhi Customs inasmuch as in former cases there was a subsisting guideline for mutilation at the time of import of the rags whereas there was none so far as the appellants herein are concerned. Despite this lack of guidelines we also observe that the appellants had madesuo motuoffer for further mutilation to the satisfaction of the Customs authorities but the adjudicating authority did not agree to any such offer. This means that the adjudicating authorities went ahead confiscating the goods and imposing penalties despite no clear cut guidelines laid down for the benefit of the importers. On the other hand, as held in the order in the case of Kakkar and Co. and Others the mutilation of garments was complete as per the national and international practice and understanding referred to in para 12 of the Tribunal's order mentioned supra." *

and corroborated by the findings of the Tribunal in a previous decision in the case Kakkar and Co. and Ors. - 1988 (35) ELT 718 (Tri.) which are set out as follows : (page 65)

"We have carefully considered the pleas advanced on behalf of all the appellants and those on behalf of the department."

Condition No. 37 at page 168 - the subject of interpretation - in the current Policy 1985-88 has already been extracted. Condition in previous policy in 1984-85 (and for that matter in 1983-84 Policy) is as follows :-

"In the case of woollen rags/shoddy wool/synthetic rags, clearance of imported goods will be allowed by the Customs authorities only after the goods have been completely mutilated." We observe that while there is some change in the condition in the 1985-88 Policy vis-a-vis previous policy, the word 'completely' occurs in both without laying down the standard of completeness in mutilation. Department has laid down its own standard without any authority to back up its standard. On the other hand, the appellants have furnished some evidence as to how 'mutilation' is understood in international and national trade. We do not have any reason to disbelieve this evidence. Additional Collector's finding that these are evidences of interested parties is not tenable because we do not understand as to how the parties who have given the certificates can be treated as the interested parties. They are not the supplier of the goods in the instant cases.

13. In the absence of any identifiable test of complete mutilation laid down in the Policy for the guidance of the importers and the endorsement agencies, the benefit has to be given to the importers. Supreme Court has held so in the case ofU.O.I.v. TISCO(ECRC AND C) on the controversy whether the goods produced by the respondent therein are skelp or strip. The Court has found in that case "Since the duties on strip and skelp are not the same it is absolutely necessary to define the word 'skelp' so that there can be no doubt or confusion in the mind either of taxing authority or of the tax payer with regard to the tax liability qua skelp as opposed to strip. "This principle squarely applies in the instant case.'14. Factual examination reports, showing the expression of opinion

of the examining officers, indicate that goods in the first two appellants cases are synthetic garments cut into 2, 3, 4 pieces or in two pieces wholly available. The fact that these are 'rags' as declared in the Bills of Entry has not been disputed because there is neither an allegation nor a finding that the goods are not rags. The goods have been assessed as rags. The dispute is that these are not 'completely mutilated' and that these are retrievable and restitchable as fabric or garments. We are unable to agree with this finding of the Collector of Customs on the basis of the examination report and other material on record. There is no indication that the 'cut' made is along the seams of the old clothing so that these are re-stitchable and retrievable as garments.'

Having regard to the aforesaid, we are of the opinion that the tribunal came to the correct conclusion and as such no interference is called for. The appeals are, therefore, dismissed. There will be no order as to costs