Sharp Business Machines Pvt. Ltd., Bangalore

Vs

Collector of Customs, Bangalore

Civil Appeal Nos. 2403-05 of 1989

(N. M. Kasliwal, S. C. Agarwal JJ)

24.08.1990

JUDGMENT

KASLIWAL, J. -

1. All these appeals under Section 130(e) of the Customs Act, 1962 (hereinafter referred to as 'the Act') are directed against the common order made by the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi dated October 31, 1988 in C.A. Nos. 808 to 810/87-A.

2. Brief facts of the case are that M/s Sharp Business Machines (Pvt.) Ltd., Bangalore (hereinafter referred to as 'the company') is a small scale manufacturing unit duly registered as such since 1984. The company had started the phased manufacture of plain paper copiers and obtained a licence in this regard dated November 25, 1986 for Rs 4,94,500 from the licensing authority. The company imported components and consumables in SKD/CKD for plain paper copiers. Three consignments were imported from M/s Paralax Industrial Corp., Hong Kong under airways bill numbers 098, 4960, 3120; 098, 4960, 3116; and 098, 4960, 3105 all dated January 21, 1987. The goods were received at the air cargo complex, Bangalore. The company sought the clearance of the imported goods under bills of Entry Nos. 2044, 2045 and 2046 all dated February 3, 1987. Similarly, the goods were also imported from M/s Alpha Papyrus Trading Co. Pvt. Ltd., Singapore under airway Bill No. 098, 4925, 4914 dated February 19, 1987. The clearance for this consignment was sought under bill of Entry No. 4993 dated March 11, 1987. The company had declared the value of each of the consignments at Rs 32,182, Rs 43,359, Rs 5412 and Rs 18,659 respectively in respect of the abovementioned bills of Entry Nos. 2044, 2045, 2046 and 4993. The total value declared was Rs 99,612 under all the four bills.

3. Proceedings were held before the Appraiser of Customs air cargo complex Bangalore for verification of the goods and their valuation etc. and the statements of the company's Managing Director Shri Sadanand were also recorded on February 11, 1987, March 10, 1987 and March 18, 1987 under Section 108 of the Act. The Collector of Customs issued a notice to the company under Section 124 of the Act on March 4, 1987 relating to the first consignment. In the said notice it was stated that four items were not covered by the licence and the same were liable for confiscation. However, on March 30, 1987 the Collector issued another notice in supersession of the earlier notice dated March 4, 1987. Notice was also issued on the same date in respect of bill of entry dated March 11, 1987. By the said notices the Collector proposed to enhance the value of the goods imported and further proposed to confiscate the entire goods imported and also to levy a fine and other penalties. The company was accused of misdescription of the goods, misdeclaration of value, suppression of the relationship with the suppliers, suppression of the place of origin of goods etc.

4. The Collector by his order dated April 13, 1987 decided all the points against the company. The Collector held that the quotations given by M/s Shun Hing Technology Ltd. along with the application for approval of their PMP during July 1986 should be taken as the correct value of the goods imported, and the plea of the company that it had received a special discount in view of the bulk purchases and promise of future purchases was not accepted. The Collector in these circumstances determined the price of the goods at Rs 7,15,485 for the purposes of Section 14(1) of the Act. The Collector thus held that there was a misdeclaration of the value to the tune of Rs 6,15,873 and the duty payable thereon would be Rs 10,96,228.20. The Collector further held that the entire goods imported were liable to confiscation under Section 111(m) of the Act. The Collector also held that the goods imported were fully finished copiers in SKD/CKD form and as such there was a misdeclaration that the imported goods were only parts of the copiers. The Collector also held that description of most of the items in the invoices had been deliberately manipulated to suit the description in the licence. The goods covered by three Bills Nos. 2044, 2045 and 2046 were held to be one consignment and one AWB and thus viewed as one consignment, it amounted to the import of ten copiers. The goods imported under the Fourth Bill No. 4993 were four fully finished copiers in SKD/CKD form. The Collector further held that in terms of note (i) to Imports Control Order, 1955 and Customs Tariff Act, 1975, these goods will be deemed to be fully assembled copiers for the purpose of valuation and licence. Thus the goods imported as fully assembled copiers were not permissible to be imported and this was a clear violation of the Act and the terms of the licence. It was also held in the alternative that even if all the parts imported were viewed individually, none of the items tally with the licence. The Collector in this regard gave detailed reasons for arriving at this conclusion. The Collector also held that the value of the parts imported for the purposes of Section 14(1) of the Act would be Rs 5,63,332 whereas the importers were permitted to import goods worth Rs 4,94,500. There was thus an excess of Rs 68,832 and as such the goods were liable to confiscation under Section 111(d) of the Act. The Collector in these circumstances passed an order for confiscation of the entire goods with an option to the company to redeem them on payment of a fine of Rs 3 lakhs. The Collector also imposed a fine of 1 lakh on the company and Rs 1 lakh on Shri Sadanand the Managing Director of the Company.

5. The company filed two appeals aggrieved against the common order of the Collector relating to both the notices and a separate third appeal was preferred by the Managing Director before the Customs, Excise and Gold (Control) Appellate Tribunal. The Tribunal dismissed all the three appeals by a common order dated October 31, 1988. The company and the Managing Director aggrieve against the order of the Tribunal have filed the abovementioned three appeals before this Court.

6. One of the arguments raised before the Tribunal was that the Collector erred in treating SKD/CKD parts of the copiers imported, as assembled copiers, for the purpose of Schedule I to the Imports (Control) Order, 1955 and the case Union of India v. Tarachand Gupta & Bros. ((1971) 1 SCC 486 : AIR 1971 SC 1558) applied on all fours to the instant case. The Tribunal in this regard set aside the finding recorded by the Collector and placing reliance on a decision of the Calcutta High Court in Collector of Customs, Calcutta v. Mitsuny Electronic Works ((1987) 30 ELT 345 (Cal) : (1989) 24 ECC 312) held that one has to look into the respective licence and not to the fact that if all the consignments covered by all the bills of entry are assembled together, there will be complete machines. The Tribunal, however, upheld the other findings recorded by the Collector to the effect that even if all the imported parts contained in SKD/CKD packs of copiers were viewed individually the licence produced was not valid for any of the items imported. The Tribunal thus held that the Collector was right in holding that the imported goods were not covered by the valid licence. The Tribunal also held that the Collector was right in rejecting the price shown by the

company in the invoices. The Tribunal also rejected the contention made by the counsel for the company that the valuation made by the Collector was exorbitant. As regards the question of imposing fine and penalty also the Tribunal found the order of the Collector as correct, and did not find any cogent reason to interfere in the order of the Collector.

7. We have heard Mr Dholakia for the appellants and Mr Kapil Sibal learned Additional Solicitor General for the respondents.

8. It was argued by Mr Dholakia that the Tribunal committed a serious error in holding that the invoices submitted by the company were undervalued and could not be relied upon for determining the correct value of the goods imported. It was contended that the Collector of Customs was not correct in determining the value of the imported goods on the basis of the quotations of M/s Shun Hing Technology Ltd., Hong Kong. The quotation on Shun Hing indicated prices at Hong Kong and not the place of importation. There was no other material on record to determine the value of the imported goods. It was thus contended that in the absence of any other relevant material, the invoice price has to be taken as the basis for valuation. It was also submitted that there was no justification in discarding the price shown in the invoices which contained the correct value of the goods imported and in case the customs authorities were not placing reliance on such prices mentioned in the invoices, then the burden lay on the customs department to find out the correct value of the goods by collecting material and other adequate evidence before enhancing the value of the imported goods. The onus to prove the charge of undervaluation against the company was on the customs department and the evidence relied upon by them, as contained in the adjudication order, is not at all sufficient to discharge that onus. It was further argued that any reliance placed on the quotations furnished at the time of submitting the application for grant of licence was wholly erroneous. At the time of submitting the application for grant of licence the prices are quoted for fixing the upper limit of the value of the licence. When the actual purchase transactions were entered into, the company negotiated for the price and having regard to the quantum of purchase and the prospects of future sales, the company was given 25 per cent discount by the suppliers. It was also submitted that the prices quoted by M/s Shun High Technology Ltd., Hong Kong were not the value of the components imported by the company in SKD/CKD form of plain paper copiers. Thus any price quoted by M/s Shun Hing can never form any basis for arriving at a proper and correct valuation of the goods imported by the company in the present case.

9. On the other hand it was submitted by the learned Additional Solicitor General that it has been admitted by Shri P. N. Sadanand, Managing Director of the company in his statement dated March 10, 1987 that the goods imported in the present case by the company were of Japanese origin and manufactured by M/s Matushita Electric Company Ltd., Japan. M/s Shun Hing Technology Ltd., Hong Kong were the authorised agents of M/s Matushita Electric Co. Ltd., Japan, who are the manufacturers of Panasonic copiers. He further admitted that normally the Panasonic copiers were supplied to Hong Kong in fully assembled form and then they were dismantled in Hong Kong by the agents and thus supplied in India in SKD/CKD form. Shri Sadanand admitted to have visited Hong Kong during January 1987 alone with his Engineer Shri K. S. Radhakrishan for purchase of 10 copiers - 6 Nos. Model FP 1300 and 4 Nos. Model FP 2625 and that he along with the Engineer dismantled the fully assembled copiers. It was submitted that the goods contained in the cartons comprised of all the parts required for full and complete assembly of copiers. At the time of examination of the goods covered by bill of Entry No. 4993 dated March 11, 1987, it was found that out of the six cartons, four cartons were the original cartons used for packing fully finished/assembled copiers Model FP 2625. The description, model number, brand, manufacturer and country of origin/manufacture of the copier (viz. Plain Paper Copier FP 2625 Panasonic,

Matushita Electric Co. Ltd. and Japan respectively) were clearly marked on these four cartons, one set of cassettes, trays, covers, one drum, one developer unit and a bottle of developer. It was thus argued that the original packing cartons used for packing fully finished copiers are normally supplied only if fully finished copiers are purchased. It was submitted that the adjudicating authority has given detailed reasons for showing that the goods imported were not components of plain paper copiers as declared. In fact, the company had purchased 14 fully finished copiers 10 in Hong Kong and 4 in Singapore and had then dismantled for importing the same in the guise of components of copiers. The company had submitted application for approval of their phased manufacturing programme to the Development Commissioner, Small Scale Industries Government of India, New Delhi in July 1986 and along with this application they had also submitted the quotations received by them from M/s Shun Hing Technology Ltd., Hong Kong which covered all the items imported except a few items like toner, drum and table for model FP 2625. The company in the present case not only violated the terms and conditions of licence but also committed a complete fraud in importing fully finished copiers which was a totally prohibited item, in the guise of separate components and accessories by dismantling the fully finished copiers. In the above circumstances the adjudicating authority was fully justified in not believing the value mentioned in the invoices and in placing reliance on the prices mentioned in the quotations given by M/s Shun Hing Technology Ltd., Hong Kong. It was further argued by Mr Sibal that the prices quoted by M/s Shun Hing were based on the prices given by the manufacturers i.e. M/s Matushita Electric Co. Ltd., Japan and there was no question of supplying the components of the copiers on a lesser price than given by the manufacturers themselves. The company had a special relationship with M/s Shun Hing Technology Ltd., Hong Kong as a sort of collaborator with no formal agreement and that M/s Paralax Industrial Corp., Hong Kong were in turn agents of M/s Shun Hing Technology Ltd., Hong Kong.

10. We have considered the submissions made by learned counsel for the parties. Section 14 of the Act provides for valuation of goods for the purpose of assessment. Section 14(1) which is relevant for out purposes reads as under :

> "14. Valuation of goods for purposes of assessment. - (1) For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any others law for the time being in force whereunder a duty of customs is chargeable on any goods by reference to their value, the value of such goods shall be deemed to be the price at which such or like goods are ordinarily sold, or offered for sale, for delivery at the time and place of importation or exportation, as the case may be, in the course of international trade, where the seller and the buyer have no interest in the business of each other and the price is the sole consideration for the sale or offer for sale :
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> Provided that such price shall be calculated with reference to the rate of exchange as in force on the date on which a bill of entry is presented under Section 46, or a shipping bill or bill of export, as the case may be, is presented under Section 50."

11. According to the above provision the value of the goods shall be deemed to be the price at which such or like goods are ordinarily sold, or offered for sale, for delivery at the time and place of importation, in the course of international trade where the seller and the buyer have no interest in the business of each other and the price is the sole consideration for the sale or offer for sale. In the present case the company itself had produced a copy of the quotations received by them from M/s Shun Hing Technology Ltd., Hong Kong in respect of the copiers and other items imported alone with their application for approval of their phased manufacturing programme. The company itself

having produced these quotations, they cannot disputed the correctness of the prices mentioned therein. The company has not only not disputed the correctness of these quotations but has not produced any other material on record to show that the value mentioned in the invoices was the correct market value of the goods imported at the relevant time. The adjudicating authority in these circumstances was perfectly justified in taking the prices mentioned in the quotations as a basis for determining the correct value of the imported goods.

12. Mr Dholakia next contended that the Tribunal itself had set aside the finding of the adjudicating authority on the question of treating SKD/CKD packs of the copiers imported comprised of all the 100 per cent components of copiers. The company had tried to practice a fraud in defeating the import policy itself. The intention and purpose of the import policy was to give incentive and encouragement to the new entrepreneurs establishing small scale industries and in the first phase to import 62 per cent of the components of the copiers and the balance of 38 per cent was to be manufactured by them indigenously. According to the import policy this percentage of 62 per cent was to be reduced in the subsequent years. The import policy was not meant for such entrepreneurs who instead of importing 62 per cent of the components, imported 100 per cent of the components of a fully finished and complete goods manufactured by a foreign country. It is an admitted position that fully finished plain paper copiers were a prohibited item for import and thus the device adopted by the company in the present case was a complete fraud on the import policy itself. Apart from the above circumstances in our view the Tribunal was not right in setting aside the finding of the adjudication authority and in taking the view that one has to look into the respective licence and not to the fact that if all the consignments covered by all the bills of entry assembled together, there will be a full and complete machinery.

13. It is an admitted position that goods covered by the three bills of Entry Nos. 2044, 2045 and 2046 were all dated February 3, 1987 and had been shipped from Hong Kong on the same day i.e. on January 21, 1987. The entire goods had arrived on the same day and by the same flight on January 30, 1987. The goods covered under the three bills of entry have been supplied by the same supplied viz. M/s Paralax Industrial Corp., Hong Kong. The goods covered by these bills of entry are ten numbers copiers in SKD/CKD condition, accessories, spares, consumables and excess items. The goods covered by the fourth bill of entry are four numbers copiers in SKD/CKD condition and consumables. The licence produced is valid for certain components and is not valid for fully assembled copiers. The fully assembled copiers are the end products of the importers and hence cannot be imported by them. Plain Paper Copiers are electronic equipments.

14. The case Union of India v. Tarachand Gupta & Bros. ((1971) 1 SCC 486 : AIR 1971 SC 1558) lends no assistance to the appellants in the facts and circumstances of the present case. In the above case Tarachand & Bros. held an import licence dated July 10, 1956 permitting them to import parts and accessories of motorcycles and scooters and per Appendix XXVI of the Import Policy Book for July-December, 1956. Under the said licence, the respondents in that case imported certain goods which arrived in two consignments, each containing 17 cases by two different ships. According to the respondents, the goods so imported by them were motorcycle parts which their licence authorised them to import. The customs authorities, on the contrary held, on the examination of the goods, that they constituted 51 sets of "Rixe Mopeds complete in a knocked down condition". After holding an inquiry the Deputy Collector directed confiscation of the said goods with an option to the respondents to pay certain sums in lieu of confiscation and also personal penalties. That order was passed on the basis that the goods imported were not parts and accessories of motorcycles and scooters presumably under Entry 295 of the Schedule to the Import (Control) Order but were motorcycles/scooters in completely knocked down conditions, prohibited under remark II against

Entry 294, a licence in respect of goods covered by it would authorise import of motorcycles and scooters. The Deputy Collector held that through the goods were not completely knocked down condition it made no difference as the tyres, tubes and saddles were easily obtainable in India and their absence did not prevent the machines being otherwise complete. He also found that there was a trade practice under which traders were supplying motorcycles without tyres, tubes and saddles unless the purchaser specially asked for these parts. According to him the goods could not be regarded as spare parts but were "Moped in disassembled condition". The respondents in the above case filed a civil suit and the matter went in appeal to the High Court. The Letters Patent Bench of the High Court held that the Collector's jurisdiction was limited to ascertain whether or not the good imported by the respondents were spare parts and accessories covered by Entry 295 in respect of which they undoubtedly held the licence, and therefore, he could not have lumped together the two consignments which, though imported under one licence, arrived separately and were received on different dates and could not have come to the conclusion that the plaintiffs had imported 51 "Rixe" Mopeds in completely knocked down condition. The respondents were entitled to import the said goods and therefore, Section 167(8) of the Sea Customs Act did not apply and the respondents consequently could not have been held guilty of breach either of that Section or Section 3 of the Imports and Exports (Control) Act. It was further held that the decision of this Court in Girdharilal Bansidhar v. Union of India ((1964) 7 SCR 62 : AIR 1964 SC 1519 : (1964) 2 Cri LJ 461) did not overrule but only distinguished judgment in D.P. Anand v. T.M. Thakore & Co. (C.A. No. 4 of 1959, decided on August 17, 1960 (Bom HC)) and therefore, the binding force of that decision remained unshaken. The Union of India came in appeal to this Court by grant of certificate. This Court held as under :

> "Under Entry 295, except for rubber tyres and tubes for whose import a separate licence could be obtained under Entry 41 of Part V, there are no limitations as to the number of kind of parts or accessories which can be imported under a licence obtained in respect of the goods covered thereunder. Prima facie, an importer could import all the parts and accessories of motorcycles and scooters and it would not be a ground to say that he has committed breach of Entry 295 or the licence in respect of the goods described therein, that the parts and accessories imported, if assembled, would make motorcycles and scooters in CKD condition. There are no remarks against Entry 295, as there are against Entry 294, that a licence in respect of goods covered by Entry 295 would not be valid for import of spares and accessories which, if assembled, would make motorcycles and scooters in CKD condition. Apart from that, the goods in question did not admittedly contain tyres, tubes and saddles, so that it was impossible to say that they constituted motorcycles and scooters in CKD condition. The first two could not be imported and were in fact not imported because that could not be done under the licence in respect of goods covered by Entry 295 which expressly prohibited their import and a separate licence under Entry 41 of Part V would be necessary. The third, namely, saddles were not amongst the goods imported. No doubt, there was, firstly, a finding by the Collector that a trade practice prevailed under which motorcycles and scooters without tyres, tubes and saddles could be sold. Secondly, the tyres and tubes could be had in the market here and so also saddles, so that if an importer desired, he could have sold these goods as motorcycles and scooters in CKD condition. The argument was that since there was a restriction in Entry 294 against imports of motorcycles and scooters in CKD condition, the importer could not be allowed to do indirectly what he could not do directly.

The argument apparently looks attractive. But the question is what have the respondents done indirectly what they could not have done directly. In the absence of any restrictions in Entry 295, namely, that a licence in respect of goods covered by Entry 295 would not be valid for import of parts and accessories which, when taken together, would make them motorcycles and scooters in CKD condition, the respondents could import under their licence all kinds and types of parts and accessories. Therefore, the mere fact, that the goods imported by them were so complete that when put together would make them motorcycles and scooters in CKD condition, would not amount to a breach of the licence or of Entry 295. Were that to be so, the position would be anomalous as aptly described by the High Court. Suppose that an importer were to import equal number of various parts from different countries under different indents and at different times, and the goods were to reach here in different consignments and on different dates instead of two consignments from the same country as in the present case. If the contention urged before us were to be correct, the Collector can treat them together and say that they would constitute motorcycles and scooters in CKD condition. Such an approach would mean that there is in Entry 295 a limitation against importation of all parts and accessories of motorcycles and scooters. Under that contention, even if the importer had sold away the first consignment or part of it, it would still be possible for the Collector to say that had the importer desired it was possible for him to assemble all the parts and make motorcycles and scooters in CKD condition. Surely, such a meaning has not to be given to Entry 295 unless there is in it or in the licence a condition that a licensee is not to import parts in such a fashion that his consignments, different though they may be, when put together would make motorcycles and scooters in CKD condition. Such a condition was advisedly not placed in Entry 295 but was put in Entry 294 only. The reason was that import of both motorcycles and scooters as also parts and accessories thereof was permitted, of the first under Entry 294 and of the other under Entry 295. A trader having a licence in respect of goods covered by Entry 294 could import assembled motorcycles and scooters, but not those vehicles in CKD condition, unless he was a manufacturer and had obtained a separate licence therefor from the Controller of Imports who, as aforesaid, was authorised to issue such a licence on an ad hoc basis. Thus the restriction not to import motorcycles and scooters in CKD condition was against an importer holding a licence in respect of goods covered by Entry 294 under which he could import complete motorcycles and scooters and not against an importer who had a licence to import parts and accessories under Entry 295.

If Dr Syed Mohammad's contention were to be right we would have to import remark (ii) against Entry 294 into Entry 295, a thing which obviously is not permissible while construing these entries. Further, such a condition, if one were to be implied in Entry 295, would not fit in, as it is a restriction against import of motorcycles and scooters in CKD condition and not their parts and accessories. There is, therefore, no question of a licensee under Entry 295 doing indirectly what he was not allowed to do directly. What he was not allowed to do directly was importing motorcycles and scooters in CKD condition under a licence under which he could import complete motorcycles and scooters only. That restriction, as already observed, applied to a licensee in respect of goods described in Entry 294 and not a licensee in respect of goods covered by Entry 295.

The result is that when the Collector examines goods imported under a licence in respect of goods covered by Entry 295 what he has to ascertain is whether the goods are parts and accessories, and not whether the goods, though parts and accessories, are so comprehensive that if put together would constitute motorcycles and scooters in CKD condition. Were he to adopt such an approach, he would be acting contrary to and beyond Entry 295 under which he had to find out whether the goods imported were of the description in that entry. Such an approach would, in other words, be in non-compliance of Entry 295."

15. This Court distinguished the case of Girdhari Lal Bansi Dhar ((1964) 7 SCR 62 : AIR 1964 SC 1519 : (1964) 2 Cri LJ 461) by making the following observation :

> "It will be noticed that the Bombay decision in D.P. Anand case (C.A. No. 4 of 1959, decided on August 17, 1960 (Bom HC)) was not dissented from but only distinguished, and therefore, the High Court in the present case was justified in following it. It is true, however, that counsel for the appellant there relied on that decision in support of his proposition that a ban on completed article cannot be read as a ban on the importation of its constituents, which, when assembled, would result in the prohibited article, and this Court pointed out in answer that in D.P. Anand case (C.A. No. 4 of 1959, decided on August 17, 1960 (Bom HC)), the imported components could not have when assembled, made up the completed article because of the lack of certain essential parts which admittedly were not available in India and could not be imported. The real distinction, however, between the two cases was that the decision of the Collector in D.P. Anand case (C.A. No. 4 of 1959, decided on August 17, 1960 (Bom HC)) was not, as was the decision in Girdhari Lal case ((1964) 7 SCR 62 : AIR 1964 SC 1519 : (1964) 2 Cri LJ 461) under which of the two competing entries the imported goods fell but that the imported goods in question, if assembled together, would not be the goods covered by the entry, and therefore, not the goods in respect of which the licence was granted. Further, the articles in question, even when assembled together, were not prohibited articles as in Girdhari Lal case ((1964) 7 SCR 62 : AIR 1964 SC 1519 : (1964) 2 Cri LJ 461). Girdhari Lal case ((1964) 7 SCR 62 : AIR 1964 SC 1519 : (1964) 2 Cri LJ 461) is clearly distinguishable because it is not as if motorcycles and scooters are prohibited articles as was the case there. The restriction is not against licensees importing motorcycles and scooters under Entry 294 and parts and accessories under Entry 295 but against the licensees under Entry 294 importing motorcycles and scooters in CKD condition. The question in the instant case was not under which of the two Entries 294 or 295, the goods fell, but whether the goods were parts and accessories covered by Entry 295."

16. In our view the Tribunal was not correct in placing reliance on the case Union of India v. Tarachand Gupta & Bros. ((1971) 1 SCC 486 : AIR 1971 SC 1558) in the facts and circumstances of the present case. In the case before us the import of fully assembled copiers was prohibited. The appellant was only entitled to import 62 per cent of the components. As already mentioned above, the device adopted by the appellant in the present case was a complete fraud on the Import Policy and the appellant was doing indirectly what he was not permitted to do directly. We are further of the view that the facts in the present case are more akin and similar to the facts of the case Girdhari Lal Bansi Dhar v. Union of India ((1964) 7 SCR 62 : AIR 1964 SC 1519 : (1964) 2 Cri LJ 461) which was distinguished in the case of Union of India v. Tarachand Gupta & Bros. ((1971) 1 SCC 486 : AIR 1971 SC 1558)

17. Mr Dholakia also tried to assail the finding recorded by the Collector and upheld by the Tribunal and argued that the components imported by the appellant tallied with the parts which were permitted under the licence. We do not find any force in this submission. The Collector has given detained reasons for holding that the imported goods were not covered by the valid licence and the Tribunal having upheld such finding, the same cannot be challenged by the appellant before this Court.

18. Mr Dholakia also submitted that in the facts and circumstances of the case the order confiscating the goods and imposing fine and penalty both on the company and Shri Sadanand, the Managing Director was too high and ought to be reduced.

19. We find no force in this submission as well. This is a case where the appellant had not only violated the terms and conditions of the licence but also committed a fraud on the Import Policy itself. Thus we find no ground or justification to reduce the penalty or fine.

20. In the result we find no force in these appeals and the same are dismissed with one set of costs.

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