

Dynamatic Hydraulics Ltd

Vs

Collector of Customs, New Customs House, Bombay

Civil Appeal Nos. 4695-98(NM) of 1990

(S. Ranganathan, N.D. Ojha, Smt. M.S. Fathima Beevi JJ)

20.08.1991

JUDGMENT

RANGANATHAN, J.

1. On November 28, 1981, the appellant company applied for a licence to import, inter alia, components of plain paper copiers, the manufacture of which was to be started by them shortly under the agreement of technical collaboration with the Nashua Corporation, USA. The CIF value of the licence applied for was as follows :

# Item	Value	Value Rs (in millions)	Rs (in crores)(i)	Components	28.800	2.8800(ii)
Accessories	1.007	0.1007(iii)	Consumables	14.172	1.4172	----- Rs
	43.979	Rs 4.3979	-----	-----	-----	###

The details of the components to be imported were set out in an annexure to the application divided into 12 groups. The one item around which the controversy mainly centres is Serial No. 12. The component was described as "copier frame" in the group "Main Motor Assembly, Magnetic Clutch Assembly, Control Unit, Power Source Section". 1500 numbers of this component valued at Rs 1,27,42,368 (1.27 crores) were sought to be imported. The government granted a licence on September 30, 1982 for import of items valued at Rs 3.73 crores, the annexure to which classified the item described above thus :

#S. No.	Component Group	17 Main Motor	18 Magnetic Clutch	19 Power Board
	Section	24 Control Unit	###	

The value of these and other components to be imported as given by the appellant was left undisturbed. In other words, the appellant was allowed to import components of the above description valued at Rs 1.27 crores out of a total licence value of Rs 3.73 crores (roughly 34 per cent). The appellant made a revalidation application on July 27, 1984, seeking to import components, accessories and spares, of the value of Rs 1.58 crores. Of these 900 nos. were to be of the component "Copier Frame" falling under the above groups and valued at Rs 71,14,534 roughly 53 per cent of the total value of the imports applied for. However, the value of the licence granted was restricted to Rs 80 lakhs which included 589 nos. of "copier frame" of the value of Rs 28,22,870 (roughly 34 per cent). In short, the value of the item "copier frame" permitted to be imported by the appellant, constituted about 34 per cent of the total value of either licence.

2. When the goods were eventually imported, the Collector of Customs came to the conclusion that there were various violations of the terms of the licence. He passed four adjudication orders in

respect of four items of import by which he imposed the following heavy penalties and fines in lieu of confiscation :

#S. No. Amount of fine Amount of penalty Rs Rs1. 4,00,000 (3,00,000) 50,000 (37,500)2. 15,50,000 (11,50,000) 2,00,000 (1,50,000)3. 4,14,067 (3,00,000) 25,000 (18,500)4. 15,00,000 (11,25,000) 2,00,000 (1,50,000)###

(N.B. The figures in brackets represent the amounts of fine and penalty as reduced on appeal by the Tribunal)

3. The four orders of the officer are on similar lines. He found -

(i) that the appellant had imported a number of items (as per list in the licence) in complete assembly with the main frame;

(ii) that they had imported a number of "mounted PCB assemblies (including main control unit), lens system, halogen lamps, autotransformer units, power supply unit, exit rollers, drum shafts, blowers, motors, gears, capacitors relays" and many other innumerable small parts which cannot be arranged and identified straightway, which are not shown in the list attached with the licence and which cannot be considered to be part of the main frame itself as claimed by the appellant; and

(iii) that they had imported 100 per cent of the parts of the photocopying machine out of which 70 per cent assembled together with the main frame and the balance of 30 per cent can be assembled very quickly without any serious effort.

In short, the charge was that the appellant had virtually imported complete photocopier machines whereas they were permitted to bring only 52 specific non-electronic parts. He pointed out that this was contrary to the phased development programme (PDP) under which the goods were imported. He concluded that the licence was not valid to cover all the items imported. He also pointed out that the values as shown in the invoices could not be accepted because there was the interception of a "related person". In the result, he imposed fines and penalties as detailed above.

4. The appellants preferred appeals to the Central Excise, Customs and Gold Control Appellate Tribunal. The Tribunal dismissed the appeals insofar as the validity of the licence was concerned but they allowed them on the question of valuation. In regard to one item viz. cover glass, which was admittedly imported "over and above" the order, they directed a fresh appraisal of its value. Keeping in mind the relief given in respect of valuation, the Tribunal reduced the amounts of the fine and penalty to the amounts set out in brackets earlier. On the first issue, the Tribunal disposed of the contentions in the following terms :

"21. The list attached to the licence also shows that these parts cannot make a photocopier. The statement of November 7, 1986 given by Shri A.V. Athley, Chief Executive of the appellants clearly owned that the components imported in these consignments constitute complete photocopying machines "more or less". According to this statement only some electrical parts were required and plugs, cables, voltage stabilisers could be some of them.

22. We examined the list of imported goods in the light of the list attached to the licence. The elaborate argument that the main frame includes several other

components, that the selenium drums include selenium drum assembly have to be rejected for the reason that the items as listed in the list attached to the licence do not cover them. There is no question of elaborate interpretation of these words in the list. If the list says main frame, it should be main frame only and nothing else. Similarly, the list simply mentions drums and we do not agree that this should be interpreted to mean drum assembly and to include several other items. The licence is clearly for the non-electric items. The items are clearly mentioned. Viewed in this light, we do not find any infirmity in the Collector's order. Therefore, we reject the arguments in this regard and hold that the Collector correctly held that the licence did not cover the goods. Consequently the confiscation under Section 111(d) is upheld."

The assessee appeals.

5. Sri Salve, learned counsel for the appellant submits that, even if it is assumed that there was some technical violation here or there, this was not a case in which such heavy penalties and fines should have been imposed. He invites our attention to the decision of this Court in *Union of India v. Tarachand Gupta* ((1971) 1 SCC 486 : (1971) 3 SCR 557). In that case, under Entry 294 of the relevant schedule of the Import Trade Policy, the import of the motor cycles and scooters was permitted under an appropriate licence but such a licence could not be used for their import in a completely knocked down condition except by approved manufacturers. Under Entry 295 parts of the motor cycles and the scooters (except for tyres and tubes) could be imported under an appropriate licence. The respondent before the Supreme Court had a licence for imports under Entry 295 and they imported all the component parts of scooters and motor cycles (except tyres and tubes) in two separated consignments in such manner that putting the goods of both consignments together, a scooter or motor cycle (less tyres and tubes) could be assembled. The goods were confiscated and fines and penalties imposed. This Court, however, held, to quote the headnotes : (SCR headnote, p. 558)

"(1) The mere fact that the goods imported by the respondents were so complete that when put together would make motor cycles and scooters in CKD condition would not amount to a breach of the licence or of Entry 295. The restriction not to import motor cycles and scooters in CKD condition was against an importer holding a licence in respect of the goods covered by the Entry 294 under which he could import complete and assembled motor cycles and scooters, and not against an importer who had a licence to import parts and accessories under Entry 295.

(2) 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 motor cycles and scooters in CKD condition, because, it would then mean that there is in the entry a limitation against importation of all parts and accessories of motor cycles and scooters. Such an approach, would be acting contrary to and beyond Entry 295, and in non-compliance of the entry and would lead to the anomalous result that even if the importer had sold away one consignment or part of it, the Collector could still say that had the importer desired it was possible for him to assemble all parts and make motor cycles and scooters in CKD condition."

On the same principle, counsel submits, so long as the present appellant was found only to have

imported component parts of a photocopier for which he had a licence, it cannot be a valid objection that the parts, so imported, could be assembled together to make up 70 per cent or even 100 per cent of a complete photocopier machine. He submits that the main objection of the Tribunal was that the licence permitted the appellant to import only the "main frame" and, interpreting this expression strictly, they have held that the import of certain component parts fitted on to the frame was not permissible. He pointed out that, after all, the appellant had only imported component parts of the machine and the value of the imports was well within the value of the licence. In the circumstances, he submits that there was really no violation of the terms of the licence. In this connection, he draws our attention to a passage from the relevant Import Control Handbook which provides that, in cases of doubt, the Import Trade Control authorities should be consulted which was not done in this case. Pointing out that no proceedings had been initiated by the Import Trade Control authorities against the appellant for violation of the licence, he submits that the Tribunal should have relieved the appellant of the fines and penalties.

6. On the contrary, the learned Additional Solicitor General contends that the import licence was granted to the appellant in pursuance of a scheme to encourage indigenous manufacture of copying machines by allowing imports of only certain parts, components and accessories in a phased manner but the appellant was abusing the facilities so afforded by practically importing the entire machine including even parts and components the import in which was not permissible under the licence. He, therefore, submits that the heavy fines and penalties were fully justified.

7. After hearing both counsel we have come to the conclusion that the matter must be sent back to the Tribunal for being considered afresh. From the facts stated earlier, it will be seen that the amounts of fine and penalty are very substantial even after the reductions granted by the Tribunal. While the Collector has passed very detailed orders, the Tribunal has disposed of the matter more briefly. In examining the correctness of the order of the Tribunal, two aspects have to be kept in mind : (i) the nature or extent of violation of the terms of the licence by the appellants and (ii) the quantum of the redemption fines and penalties. So far as the former is concerned, the Tribunal has been somewhat cryptic. It has no doubt observed that several items imported by the assessee are not covered by the terms of the licence. As has been mentioned earlier, each of the licences contained a large number of items of components which are permitted to be imported. The Collector has set out in his orders, the extent of items which, according to him, are, and which are not, covered by the licence though the value of the items which have been imported without a licence is not quite clear. The Tribunal, however, has concentrated on only one of these items, namely, "main frame", perhaps by way of illustration. They have indicated that this expression means only the bare frame and that a large number of components which do not form part of the main frame have been sought to be imported as parts of the main frame. This is also the item we have earlier referred to. We confess we have not been able to fully understand the nature of the claim made by the assessee or the interpretation given by the Tribunal in the absence of a proper picture regarding the nature of the machine and components involved. As pointed earlier, the application for licence refers to "copier frame" and mentions this as a component of a certain "group". The first licence mentions the four independent groups that but does not talk about "copier frame" while the second refers to "main frame". A draft sketch of the "copier frame" was supplied to us which shows a number of components but this does not indicate any component item called "main frame" nor does it clearly specify the groups referred to in the licence. We are therefore unable to identify the exact nature of the component indicated and what it comprises so as to be able to say whether the Tribunal's inference that the "main frame" does not include any components other than a frame was justified. Secondly, we think some indication about the components mentioned in the licence could have been gathered from the values set out in the licences. We have mentioned earlier that the value of 1500

nos. of copier frames as shown in the first licence was of the tune of Rs 1.27 crores and that of 589 nos. specified in the second licence was Rs 28.23 lakhs. We have no idea whether the value of each main frame, if understood in the manner in which the Tribunal has explained it, would be so high as to comprehend this item in the licence. In the absence of the individual values of the main frame and other components, it is very difficult to say whether the Tribunal was justified in restricting the item "copier frame" only to "main frame" and to mean no component parts other than the "main frame". Thirdly, the concepts involved are quite technical. As pointed out on behalf of the assesseees, in such circumstances, the customs authorities are required to take the assistance of the import trade control authorities (vide, e.g., para 325 of the Handbook of Import-Export Procedures for the year 1984-85). Though the opinion of the latter is not binding on the customs authorities such a course would have been helpful where, as here, there is doubt regarding the technical nomenclature of the components mentioned in the licence. It is also of some relevance that no action has been taken by the import trade control authorities against the assessee in relation to its imports which one would have expected had there been such large scale violation of the terms of the licence as has been made to appear. While, therefore, it does appear that some of the components (such as cover glass, and some of the components imported by the assessee) were not covered by the licence, it is not quite clear to what extent the components claimed by the assessee to form part of the main frame or drum assembly are not covered by the licence.

8. So far as the second aspect is concerned, there are certain circumstances that need to be taken into account. It is clear, as pointed out on behalf of the appellant, that the consideration that the component parts imported could be assembled to constitute substantially the whole of the photocopier machine is irrelevant; the question is, to what extent there was import of unlicensed component parts. The Tribunal has agreed with the assessee that, "in interpreting the terms of the licence and judging its suitability (sic), extraneous considerations like the requirements of the phased manufacturing programme" should not be taken into account. They have also accepted the assessee's plea that no mutuality of interest had been established between the importers and the suppliers calling for a rejection of the wholesale price shown by the assessee and holding that valuation was not possible under Section 14(1)(a) of the Customs Act. They have remanded the case to the Collector for valuation by excluding the concept of 'related person' and also for valuation of the 'cover glass'. It cannot be denied that, in assessing the amount of fine or penalty, it is not only relevant but crucial to have regard to the value of the goods which have been imported without a proper licence. A proper determination of fines and penalties is not possible without a proper assessment of the values of the infringing items of import.

9. We are, therefore, of opinion that the facts of the case require a second and a closer look, if not with a view to give complete relief to the assessee, at least to determine a reasonable quantum for the redemption fines as well the penalty. We therefore set aside the orders of the Tribunal and direct it to consider the issues in the light of our observations and dispose of the appeals before it afresh.

10. The appeals are allowed to the extent indicated above. There will be no order as to costs.

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