

Pine Chemical Suppliers, and Others

Vs

Collector of Customs (Bombay)

Civil Appeals Nos. 2144-46 of 1991

(J. S. Verma, A. S. Anand JJ)

16.09.1992

JUDGEMENT

VERMA, J. :-

1. These appeals under Section 130E(b) of the Customs Act, 1962 are against the order dated August 21, 1990 passed by the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi in Appeal No. C/987-989/89-A arising out of the order dated December 13, 1988 passed by the Collector of Customs (Appeals), Bombay dismissing the appeals against the order dated March 7, 1988 passed by the Deputy Collector of Customs.

2. The appellants imported Gum Rosin declaring its CIF value at US\$ 410 per metric tonne according to the Bill of Entry which was supplied by M/s. China National Native Product and Animal By-products Imports and Exports Corporation. The declaration of the imported goods made by the appellants described it as 'OFF grade Gum Rosin' which was the description of the quality of goods also in the Bill of Entry. It appears that as a result of some, intelligence reports gathered by the Directorate of Revenue Intelligence, Bombay that Gum Rosin of standard or superior grades having higher CIF value was being imported and misdeclared as 'OFF' grade, the import of the consignments of Gum Rosin covered by the Bill of Entry in the present cases was taken up for detailed investigation by the Directorate of Revenue Intelligence, Bombay. During the course of investigation under supervision of the Directorate of Revenue Intelligence (DRI) representative samples were drawn from these goods and forwarded for test to ascertain the exact grade and quality of the Gum Rosin imported by the appellants. According to the test reports dated 19-11-1987 and 5-12-1987 of the Customs House Laboratory, the imported goods in question was found to be of 'WG' grade confirming the intelligence gathered by the DRI, Bombay. These test reports, therefore, indicated that the goods were liable to confiscation under Sec. 111(m) in addition to imposition of penalty on the appellants under Section 112 of the Customs Act, 1962 (hereinafter called 'the Act').

3. The appellants expressly informed the Directorate of Revenue Intelligence in writing by letters dated 2-2-1987 and 28-12-1987 that they did not dispute the test reports and that they also waived the notice to show cause against confiscation of the goods and imposition of penalty required to be given under Section 124 of the Act, stating clearly that the appellants were ready to get the matter adjudicated for this purpose by the customs authorities; and that they needed the goods urgently which may be released to them on their personal bond or guarantee. This request of the appellants was accepted, the goods released to them on that basis and adjudication proceeded with. The Deputy Collector of Customs by order dated March 7, 1988 held that the contemporary CIF price of 'WG' grade of Gum Rosin was US\$ 465 per metric tonne as evident from an invoice of the same supplier for supply of 'WG' grade of Gum Rosin imported by another importer and cleared through Bombay

Port and, therefore, the ascertained CIF assessable value of the goods imported by the appellants was US\$ 465 per metric tonne. The difference in the customs duty was determined on such valuation of goods for purposes of assessment in accordance with Section 14 of the Act. On this basis, the Deputy Collector of Customs determined the fine in lieu of confiscation under Section 125 and the penalty for improper importation of goods under Sec. 112 of the Act in the three cases at Rs. 1,40,000 + Rs. 70,000; Rs. 1, 15,000 + Rs. 50,000 and Rs. 1,40,000 + Rs. 70,000/- respectively. The importers (appellants) preferred appeals to the Collector (Appeals) under Section 128 of the Act which were dismissed. The further appeals to the Appellate Tribunal under Section 129A of the Act were dismissed except for reduction in the quantum of fine and penalty. The only relief granted by the Appellate Tribunal was reduction in the fine to Rs. 70,000/-; Rs. 57,500/-; and Rupees 70,000/ respectively and a similar reduction in the penalty to Rs. 35,000/-; Rs. 25,000/- and Rs. 35,000/- respectively. These further appeals have been preferred against the Tribunal's order.

4. The only points involved in these matters are two, namely (1) the valuation of goods for purposes of assessment under Section 14 of the Act; and (2) liability of the appellants for misdeclaration of the goods.

5. Having heard learned counsel for the parties, we have no doubt that these appeals must be dismissed.

6. The valuation of goods for purposes of assessment under the Customs Act, 1962 is to be made in accordance with Section 14(1) of the Act, material portion of which provides that :-

"..... 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.....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."

7. The learned counsel for the appellants. conceded as evident also from the record, that no challenge was made to the laboratory test reports which had found the imported goods to be Gum Rosin of 'WG' grade instead of 'OFF' grade as declared by the appellants and also described in the Bill of Entry. This question is concluded against the appellants by concurrent finding of fact throughout. Appellants cannot be permitted to dispute this position also in view of their categorical statement in writing to the authorities that they did not dispute the laboratory test reports and were ready to get the matter adjudicated straightway by waiving the notice to show cause against confiscation of goods and imposition of penalty as required by Section 124 of the Act. It is on this basis that the appellants obtained clearance of the imported goods for appropriation by them. It must, therefore, be accepted that the goods imported by the appellants of which they obtained clearance with request for early adjudication, accepting the laboratory test reports, was Gum Rosin of 'WG' grade and not 'OFF' grade as declared by them or described in the Bill of Entry. The valuation of the imported goods as Gum Rosin of 'WG' grade for purposes of assessment made at US\$ 465 per metric tonne on the basis indicated earlier does not, therefore, suffer from any infirmity and is not open to challenge. The only surviving question now is the examination of appellants' consequential liability as determined by the Tribunal.

8. Section 111 of the Customs Act, 1962 provides for confiscation of improperly imported goods and specifies the goods liable to confiscation in the several clauses therein, of which clause (m) is as under :-

"(m) any goods which do not correspond in respect of value or any other particular with the entry made under this Act or in the case of baggage with the declaration made under Section 77 in respect thereof ;"

9. Section 2 contains the definitions in which clause (16) defines 'entry' to mean :-

"an entry made in a bill of entry"

10. On the conclusion that the goods Imported by the appellants were 'WG' grade Gum Rosin and not 'OFF' grade Gum Rosin, it is beyond dispute that the imported goods did not correspond in respect of value as well as description with the entry made under the Act and was, therefore, liable to confiscation under Section 111 (m) of the Act. This conclusion is irresistible from the facts which are beyond challenge and the appellants' readiness for adjudication accepting the laboratory test reports. The contention of learned counsel for the appellants is that the appellants did not incur any consequential liability on account of the fact that there is no material to indicate further that the misdeclaration by the appellants was deliberate and not bona fide. We do not find any merit in this contention.

11. Section 112, in so far as it is material for the present purpose, is as under :-

"112. Penalty for improper importation of goods, etc.

Any person-

(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 111, or abets the doing or omission of such an act, or

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under Section 111, shall be liable

(i)

(ii) to (v)"

12. We have earlier indicated that the imported goods were liable to confiscation under Section 111(m) and this was obvious to the appellants at least when they requested for acquiring possession thereof accepting the laboratory test reports indicating that there was misdeclaration of the goods and agreeing to adjudication on that basis. The declaration that the imported goods were 'OFF' grade Gum Rosin while in fact they were 'WG' grade Gum Rosin was made by the appellants and it was the appellants who had acquired possession and appropriated the goods agreeing to the adjudication being made under the Act on misdeclaration being found. These undisputed facts clearly bring the appellants within the ambit of Section 112 wherein clause (b) is wide enough to penalise even a person acquiring possession or in any manner dealing with the goods which he knows or has reason to believe are liable to confiscation under Section 111. The undisputed facts are sufficient to satisfy this requirement. The appellants acquired possession of the goods knowing very well or at least having reason to believe that the imported goods were liable to confiscation under Section 111(m) since they did not dispute the test reports and agreed to adjudication. The further question of also

the requirement of definite proof that they knew when they made the declaration that it was a misdeclaration does not arise in the present case for incurring the liability of penalty under Section 112 of the Act on these facts. The dispute raised by the appellants was confined only to liability for penalty and not its quantum.

13. Section 122 relates to adjudication of confiscations and penalties. Section 124 requires issue of show-cause notice before confiscation of goods or imposition of penalty, which was waived by the appellants in the present case when they accepted the laboratory test reports and agreed to the adjudication proceedings contemplated under Section 122. Section 125 provides for option to pay fine in lieu of confiscation which was resorted to in the present case accepting the appellants' prayer to release the goods to them on their agreeing to adjudication proceedings. These provisions were clearly attracted in the case of these imported goods and that is what the appellants agreed to expressly when they agreed to adjudication and prayed for delivery of the imported goods to them in lieu of confiscation. In addition to the liability for penalty under Section 112 of the Act, the appellants were liable also to pay fine in lieu of the confiscation of the imported goods at the request of the appellants. There is no dispute raised about the quantum of the fine which does not, therefore, require any consideration.

14. The above discussion makes it clear that the misdeclaration of the goods imported by the appellants rendered it liable to confiscation under Section 111(m) and attracted Section 112 for imposition of penalty for improper importation of goods on the appellants on adjudication made under Section 122 giving the appellants option to pay fine in lieu of confiscation, to which they readily agreed accepting the laboratory test reports which proved the misdeclaration of the imported goods and attracted these provisions for adjudication of confiscation and penalty. There is no infirmity in the Tribunal's order.

15. Consequently, the appeals are dismissed. No costs. Appeals dismissed.

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