

SUPREME COURT OF INDIA

Garg Woollen Mills (P) Ltd.

Vs.

Addl. Collector of Customs, New Delhi

(S Agrawal and D Wadhwa JJ.)

01.09.1998

ORDER

S.C. Agrawal and D.P. Wadhwa, JJ.

1. This appeal is directed against the judgment of the Customs, Excise and Gold (Control) Appellate Tribunal (hereinafter referred to as 'the Tribunal') dated December 31, 1991 whereby the appeal filed by the appellant against the Order dated July 10, 1989 passed by the Additional Collector of Customs, New Delhi was dismissed. By his Order dated July 10, 1989 the Additional Collector of Customs had directed confiscation of the goods covered by Bill of Entry No. 104090, dated May 24, 1988 of synthetic rags and serviceable garments absolutely under Sections 111(d), 111(f), 111(i), 111(l), 111(m), 111(e) as well as under Section 119 of the Customs Act, 1962 (hereinafter referred to as 'the Act') and had also imposed a personal penalty of Rs. 7 lakhs on the appellants under Section 112(b) of the Act.

2. On May 24, 1988 M/s. Arbindo Woollen Mills filed a Bill of Entry for clearance at Inland Container Depot (ICD) Customs, Paragati Maidan, New Delhi. Along with the said Bill of Entry the said M/s. Arbindo Mills gave a declaration for importing the goods under open general licence saying that they are registered with the authorities in Kanpur as a small scale industry and that their registration has not been cancelled. They also filed the approval of the Textile Commissioner, Kanpur, dated May 9, 1988 for the transfer and sale of 64 M.T. and 145 M.T. of synthetic rags to the

appellants as transferred from one actual user to another in terms of the provisions of Sections 108 to 111 of the Hand Book of Procedure for Import and Export Policy, 1988-91. On examination of the bales it was found that the front view rolls of bales were found to be synthetic woollen rags and behind were found bales containing trousers cut into two pieces and serviceable garments including shirts and wind cheaters. The number of shirts in all the five containers on examination was found on pro rata basis as 40460 pieces and the total number of wind cheaters was arrived at 20020 pieces. The Department took the view that these serviceable garments had been concealed amongst mutilated garments and as such the whole consignment was liable to be confiscated under Section 119 of the Customs Act. Show cause notices were, therefore, issued to Sanjeev Kumar, Proprietor of M/s. Arbindo Woollen Mills as well as to the appellants and one S.P. Goyal. After considering the replies of the said persons to the show cause notices the Additional Collector of Customs passed the order aforementioned. The Additional Collector in the said order has recorded the following finding: Evidently, it is clear that Shri S.P. Goyal is the brain behind in fraudulently importing huge quantity of raw-material in the name of non-existent unit and Shri Sanjeev Kumar is his front man and M/s. Garg Woollen Mills is the beneficiaries in these imports. The non-appearance of Shri Ajay Garg, Director of M/s. Garg Woollen Mills before the DRI authorities inspite of summons also indicates guilt on his part. Similarly the appearance of Shri S.P. Goyal before the DRI officials as late as 10-10-1988 in pursuance to the directions given by the Additional Sessions Judge, Ludhiana on his anticipatory bail application dated 6-9-1988 and that too in presence of his Advocate is also indicative of his involvement in these nefarious activities.

3. On appeal the Tribunal has agreed with the said finding recorded by the Additional Collector. The Tribunal has found that the permission for transfer of the goods in terms of the Import Policy granted by the Textile Commissioner had been cancelled. It was further observed that the present case is the culmination of intelligence received by the DRI that ghost units are set up to misuse the O.G.L. facility given to actual users manufacturing shoddy yarn to import rags, and serviceable garments are imported and disposed of in the market. The Tribunal has, therefore, upheld the order regarding confiscation of the goods and imposition of penalty on the appellant.

4. Shri Mahabir Singh, learned Counsel for the appellant placed before us a copy of the order dated November 24, 1995 passed by the Tribunal in the appeal filed by S.P. Goyal against the judgment of the Additional Collector wherein the Tribunal has set aside the penalty that was imposed on S.P. Goyal under the order dated July 10, 1989 passed by the Additional Collector. The submission is that since the penalty imposed on S.P. Goyal has been set aside by the Tribunal, the present impugned judgment of the Tribunal upholding the order for imposition of penalty on the appellant and confiscation of goods cannot be sustained and should be set aside. We have perused the order of the Tribunal dated November 24, 1995 and we find that in the said order the Tribunal has distinguished the case of the appellant on the ground that in the impugned order passed in the case of the appellant the Tribunal was evaluating the evidence against the appellant and that the order in respect of the appellant does not apply to the case of S.P. Goyal when the Tribunal has found that evidence was not sufficient for imposition of penalty against him. Since the Tribunal has itself held that the case of the appellant has to be distinguished from that of S.P. Goyal, the order of Tribunal dated November 24, 1988 (sic) cannot lend any assistance to the case of the appellant.

5. Another contention that was urged by Shri Mahabir Singh was that the Additional Collector, as also the Tribunal, have failed to take into consideration the provisions contained in Section 125 of the Act which prescribes that whenever confiscation of any goods is authorised by the Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under the Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods or, where such owner is not known, the person from whose possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit. We do not find any merit in this contention of Mr. Mahabir Singh. Under Section 125 a discretion has been conferred on the officer to give the option to pay fine in lieu of confiscation in cases of goods, the importation or exportation whereof is prohibited under the Act or under any other law for the time being in force but in respect of other goods the officer is obliged to give such an option. In the present case, having regard to the facts and circumstances in which the goods were said to be imported and the patent fraud committed in importing the goods, the Additional Collector has found that the goods had been imported in violation of the provisions of Import (Control) Order, 1955 read with Section 3(i) of the Import and Export (Control) Act, 1947. In the circumstances he considered it appropriate to direct absolute confiscation of the goods which indicates that he did not consider it a fit case for exercise of his discretion to give an option to pay the redemption fine under Section 125 of the Act. The Tribunal also felt that since this was a case in which fraud was involved, the order of the Additional Collector directing absolute confiscation of the goods did not call for any interference. We do not find any reason to take a different view.

6. Placing reliance on the decision of this Court in Collector of Customs v. Swastika Woollen Industries 1990 (47) E.L.T. 216 Shri Mahabir Singh has lastly submitted that instead of the goods being directed to be confiscated the offer made by the appellant that the goods which have been imported may be further mutilated by the authorities should have been accepted by the authorities. The question as to whether the offer for further mutilation of the goods could have been accepted would arise only in a case where the import is found to be bona fide and the matter only related to the extent of mutilation of the goods which had been imported. The appellant could not claim the benefit of the offer to have the goods to be further mutilated to avoid confiscation in the present case where it was found that there was a fraud in the entire process of import. The decision of this Court in Collector of Customs v. Swastika Woollen Industries (supra) has, therefore, no application in the facts of the present case.

7. The appeal accordingly fails and is dismissed with costs. The costs are quantified at Rs. 10,000/-.