SUPREME COURT OF INDIA

Collector of Customs

Vs.

Reliance Industries I ,Td

(S.P.Bharucha, R.C.Lahoti and N Hegde JJ.)

07.12.1999

JUDGMENT

SANTOSH HEGDE J.

This is an appeal under Section 130-E of the Customs Act, 1962 preferred by the Collector of Customs, Bombay against an order of the Customs, Excise & Gold (Control) Appellate Tribunal, New Delhi, (for short 'the CEGAT') dated 29.9.1995. Brief facts required to be considered in this appeal arc as follows:

M/s. Reliance Industries, the respondent herein, was granted a letter of intent dated 4.12.1980 for manufacture of Polyester Filament Yam (PFY) with an actual capacity of 10,000 metric tons at their plant at Patalganga, Maharashtra. This letter of intent was converted into an industrial licence on 17.8.1981 and the capacity referred to above was enhanced to 25,125 metric tons in November, 1984. They were also issued 5 import licences for importation of machinery specified in the list appended to the said licence. Based on the said import licence, the respondent imported 23 items of machinery as enumerated in the list of goods attached to the import licence.

It is seen from the records that on a visit by a team of Customs Officers to the respondent's plant at Patalganga on 23.12.1986 and 26.12.1986, they noticed certain machinery which in their opinion was imported by the respondent in contravention/mis-declaration of the import licence granted to them. Hence, a notice dated 10.2.1987 calling upon the respondent to show cause was issued on the following grounds

(a) Why the entire PFY plant installed at Patalganga by misdeclaration of more than twice the declared licensed capacity unauthorisedly imported by them, should not be confiscated under

Section 11 l(d) and as to why penalty should not be imposed on them under Section 112 of the Customs Act, 1962;

(b) Why the four additional spinning machine lines with 32 positions having 8 ends per position, unauthorisedly imported and installed at the PFY plant in Patalganga by mis-declaration, should not be deemed confiscable under Section III of the Customs Act, 1962 and why penalty should not be imposed upon M/s. RIL under Section 112 of the said Act;

(c) Why the differential duty not paid to the extent of Rs. 74,34,10,211.58 should not be recovered from M/s. RIL on account of final assessment on merits of the entire PFY Project under 84.59(2) as projects were registered by misdeclaration and intent to evade duty;

(d)Why the customs duty of Rs.45,30,36,344.22 not declared at the time of import for assessment should not be recovered on the 4 additional machine lines from M/s. RIL and

(e) Why in respect of and (d) above done with intent to evade duty the plant should not be deemed to be confiscable under Section 111(m) and (1) and why penally should not be leviable on M/s. RIL under Section 112 of the Customs Act, 1962.

The respondent sent its reply to the said show cause notice and sought personal hearing before the Collector. In the interregnum, certain other proceedings before the Bombay High Court and this Court were initiated by the respondent; reference to which is not necessary for the disposal of this appeal.

After considering the documentary evidence available on record and hearing the arguments of the parties, the Collector framed the following issues for his consideration '.-

"(a) Preliminary points and legal submissions made on behalf of the importer;

(b) Issue relating to the allegations regarding import of machinery, equipments etc. of a higher capacity i.e. in brief, the charge (a) in para 26 of the show cause notice:

Issue relating to the allegation regarding unauthorised import of 4 additional spinning machine lines with 32 positions having 8 ends per position i.e. allegation (b) in para 26 of the Show Cause Notice;

(d) Issue relating to the valuation of the PFY Plant at Patalganga i.e. allegation in Para 26 of the Show Cause' Notice; (e) Issue relating to the valuation and assessment of duty or the 4 additional spinning machines vide allegations made in Para 26(d) of the Show Cause Notice;

(t) Issue relating to the confiscation of the plant and imposition of penally in respect of allegations contained in (e) of Para 26 of the Show Cause Notice;

(g) Related issues, if any, which may flow from any of the above allegations or evidence noticed in the course of the adjudication proceedings which are relevant for finalisation of the provisional assessment in respect of the 3 contracts registered by the importer."

He rejected the contention of the respondent that either there was any violation of the principles of natural justice in the investigation made by the appellant or the defence of the respondent was, in

any way, impaired by not making available the concerned bills of entry to the respondent. The plea of the respondent in regard to the maintainability of the show cause notice for want of jurisdiction to finalise the assessment under Section 124 of the Customs Act was also rejected. In regard to the allegation pertaining to the 4 additional spinning machines, he came to the conclusion after considering the material that was placed before him, that the relevant import licence allowed the respondent to import 4 complete spinning machines in terms of Item A-4 of the list attached to the licence and that the list of equipments authorised lor import under Item A-5 also would go to make additional 4 spinning machines. Accordingly, he held that the charges contained in sub-paras (b), (c), (d) and (e) of Para 26 of the show cause notice cannot be sustained. Consequently, he held that the intended levy of penalty under Section 112 of the Act in terms of Para 26, sub-para (e) relating to additional spinning machines could not be sustained.

As against the allegation regarding excess capacity, he came to the conclusion that the actual production in absolute terms achieved by the respondent had not exceeded the plant capacity. In the light of the above finding, he directed that the value of the Screw Pump Motor and the Booster Pump Motor be appraised by the Assistant Collector of Customs in charge of the Project Import Cell and evaluate the same and directed that the value so appraised should form the basis of the duty assessment at the project contract rate under Heading 84.66 CTA 1975. He further directed that the value of dismantling charges amounting to US $ 1.55 million be added to the assessable value of the last consignment imported as part of the reconditioned equipment under the C.G. Licence 2970355 dated 29.11.1984 under Heading 84.66 CTA, 1975.

Being aggrieved by the said order of the Collector, both the appellant as well as the respondent preferred appeals, as stated above, before tlie CEGAT which by its order dated 29.9.1995 upheld the finding of the Collector, holding that there is no evidence in the case that the plant and machinery and the equipments imported were different from what had been licensed. It also held that the charge has been framed only because the production arrived at was nearly the double the licensed capacity and as the respondent had satisfactorily explained this position in regard to the production, the CEGAT rejected the contention of the appellant-collector in regard to the charge of misdeclaration with intent to evade duty and unauthorised import of goods in excess of the licensed quantity. The appeal of the respondent also came to be dismissed.

As stated above, the Department has preferred the above appeal against the said order of the CEGAT, confirming the order of the Collector. The respondent who was aggrieved with certain directions issued by the Collector as confirmed by the CEGAT had preferred separate appeals which have been since heard and dismissed by this Court vide a separate order dated 17.11.1999. In this appeal, on behalf of the appellant, it was argued that the authoriities below failed to take into consideration the admitted tact that by virtue of the import made by the respondent which according to the Department, was by misdeclaration, respondent was able to increase the production capacity much more than what would have been possible if the import was in accordance with the terms of the licence. That fact itself according to the Department, was conclusive of the allegation that the respondent had imported machinery which were, in fact, not permitted under the licence granted to them. In other words, the respondent contends before us that the tribunal and the Collector failed to notice the logical inference that what was permitted under the licence was the importation of such machinery as was necessary' for achieving the sanctioned production but the respondent has imported machinery for production of PFY much in excess of the sanctioned production. Therefore, the import is in contravention of the licence.

We have perused the order of the Collector as well as that of the CEGAT and have heard the arguments advanced on behalf of the parties. It is to be seen that before the Collector pursuant to the show cause notice issued both the parties have produced large number of documents both in the form of affidavits and correspondence which have been dealt with by the Collector in his order. After considering these materials with reference to the question that is before us for consideration, the Collector came to the conclusion that the relevant import licence allowed the import of 4 complete spinning machines in terms of Item 4 of the list attached to the licence of equipments authorised for import. Hence, according to him, there was no misdeclaration by the respondent in regard to the import of machinery and what was imported was in accordance with the list appended to the import licence.

In its order, the CEGAT has also dealt with these questions independently and noticed the arguments of the Department that the machinery enumerated at serial No.4 in the list attached to the licence, covered only spinning frame and not complete spinning machines. After noticing this argument, it look into consideration the evidence that was adduced by the Department in support of its contention and also those produced on behalf of the respondent and came to the conclusion that there is no reason whatsoever to disagree with the finding of fact arrived at by the Collector. In this background, it is for us to consider whether the Department in this appeal has made out a case which calls for interference by this Court with the orders passed by the authorities below. The question whether the machinery imported by the respondent pursuant to the import licence granted to it is in accordance with the terms of import licence granted or not, is primarily a question of tact that is for the fact-finding authorities below and the Tribunal to decide. Their decision on technical matters as to what could be imported and what was imported must prevail. The authorities below and the Tribunal, after considering the case of the Department as well as that of the respondent and taking into consideration the entire material, concurrently arrived at the conclusion that the importation in question was in conformity with the terms of import licence. The argument of the Department that an adverse inference in regard to the legality of the import should be drawn, ilself based on certain inferences like the excess production by the respondent, was considered and for reasons recorded not accepted, and we are not inclined to disagree with the same. The question as to the jurisdiction of an authority in deciding as to the legality of importation based on the description of the goods imported is well-settled. This Court in the case of Union of India v. Tara Chand Gupta & Bros. (1971 (3) SCR 557 at 566) has held in this context thus :

"The resuit 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 motor cycles and scooters in C.K.D. 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."

The principles laid down in the above case are fully applicable to the facts of this case also. The authorities below have taken note of this principle of law and have applied the same to the facts in the instant case. We do not find any reason to interfere with this finding of fact. Hence, this appeal fails and the same is dismissed. No costs.