

## **SUPREME COURT OF INDIA**

Collector of Customs, New Delhi

Vs.

Shaila Kapoor

(S. P. Bharucha, G. T. Nanavati and B. N. Kirpal JJ.)

10.08.1999

### **ORDER**

#### **B.N. KIRPAL, J.**

1. The respondent had arrived from America in July, 1989 and availed of the transfer of residence facility. It appears that certain goods were imported by her by a ship from America on 24th May, 1990. Bill of Entry in respect thereof was filed in September, 1990.
2. The Bill of Entry which was filed related to import of some medical equipment, the equipment being Urological X-ray examination machine, Mammography and CAT Scanner equipment. When the goods were cleared, it was found that in addition to the items which were declared, the consignment also included household items like air-conditioner, VCR, washing machine etc. valued at Rs. 92,739/-. In addition thereto, the consignment also included instruments/spares such as Oscilloscope, X-ray tube, I.Cs etc. valued at Rs. 9,67,506/- and one Fax machine valued at Rs. 11,834/-. The Collector of Customs ordered confiscation of the aforesaid goods/medical equipment which had been imported because, according to him, the same had been imported without obtaining a proper import licence. After ordering confiscation the Collector gave to the importer an option to redeem the goods on payment of fine. Counsel for the respondent informs us that the redemption fine was paid and the goods were cleared.
3. An appeal was filed to CEGAT which, by the impugned order, dismissed the same only as far as the non-medical equipment was concerned, but with regard to the other equipment, it came to the conclusion that the import was in accordance with the import policy and the import licence and secondly, the respondent was liable to pay the reduced rate of duty, as provided by the Customs notification dated 18th April, 1988.
4. We will first consider the import with regard to the medical equipment. According to the Collector the machinery which was imported was more than 7 years old, which finding has not been disturbed by the CEGAT. Para 34(3) of the Import Policy which was prevalent at that point of time stipulated that "import of second-hand machinery which is older than 7 years and has less than 5 years expected residual life will not be allowed." The Collector, in view of the fact that the machinery imported was more than 7 years old, came to the conclusion that the import was not legal. The Tribunal came to the conclusion that because the machinery which was imported could be used for more than 5 years, the import was valid because, according to it, the spirit of the said import policy was "to see that import of useless old machinery having less than 7 years is not imported into the country."

5. It is difficult to comprehend how the Tribunal could possibly have come to this conclusion. The plain reading of para 34(3), which has been quoted above, shows that there was an embargo on the import of second-hand machinery which was older than 7 years old. Learned Counsel for the respondent submitted before us that the correct interpretation of this provision is that if the machinery which is imported is older than 7 years and has less than 5 years expected residual life, then alone it will not be allowed to be imported but if only one of the conditions is satisfied, it would imply that the import would be permitted. This submission is clearly opposed to the plain language of the provision which stipulates, firstly, that machinery older than 7 years cannot be imported and, secondly, machinery which is less than 7 years old, if imported, should have a life span of more than 5 years. In our opinion, therefore, the import of the said machinery was not valid and the decision of the Tribunal in this regard is incorrect.

6. The Tribunal has interpreted the Customs notification dated 18-4-1988 which exempts certain portion of Customs duty in a manner which, according to us, is not permissible. The said notification, so far as is relevant, reads as follows :

In exercise of the powers conferred by Sub-section (1) of Section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts all equipments specified in the Table hereto annexed and spare parts and accessories thereof, (hereinafter referred to as the "said goods"), when imported into India, from -

(a) so much of that portion of the duty of customs leviable thereon which is specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) as is in excess of the amount calculated at the rate of 25% ad valorem; and

(b) the whole of the additional duty of customs leviable thereon under Section 3 of the said Customs Tariff Act, subject to the following conditions, namely :

(i) the CIF cost of the said goods shall be paid for by an Indian citizen residing abroad for a minimum period of one year immediately preceding the shipment of the said goods and he affirms on oath before a Notary of the country where he is residing that he has been residing there for a minimum period of one year and produces such an affidavit before the Assistant Collector of Customs along with a photocopy of his passport at the time of clearance;

(ii) the customs duty payable on the said goods shall be paid from the proceeds of foreign exchange remitted into India by such Indian citizen;

7. The Tribunal came to the conclusion that the respondent had stayed in America for over 15 years prior to her coming to India and this conclusion was based on the correspondence which had been exchanged and placed before it. The Tribunal did not advert to the fact that the first condition which has to be fulfilled in order to get the benefit of this notification is that the Indian citizen who imports goods from abroad must have resided abroad for a minimum period of one year immediately preceding the shipment of the said goods and he affirms on oath before the Notary of the country about the factum of residence for a minimum period of one year.

8. From the facts enumerated above, it is clear that the respondent had arrived at Bombay in July, 1989 when she had put in her claim with the Customs authorities for import of goods on transfer of

residence. It is not in dispute that the goods/equipment in question was exported from America in May, 1990. Therefore, the respondent had not been a resident abroad for a minimum period of one year immediately preceding May, 1990. This being so, she could not get the benefit of this notification and the finding of the Tribunal in this regard cannot be upheld.

9. Coming to the question of import of accessories the Tribunal observed that the Licensing Authority had been satisfied that the equipment which had been imported could not have functioned without accessories. It, therefore, came to the conclusion that the same was part and parcel of the main equipment and it would not be said that there was any misdeclaration by the respondent. In this connection, the Tribunal was referring to the recommendatory letter dated 14th August, 1991 written by the Chief Controller of Import and Export to the Collector of Customs to the effect that since the imports were by the N.R.I. from his own earnings abroad and was proposed to be used in the setting up of an advanced medical diagnostic center, the customs authorities might consider allowing clearance of the goods, provided there was no objection otherwise.

10. It appears to us that such a recommendation by a Government authority like the C.C.I, was clearly uncalled for. Furthermore, the said recommendation does not say what the Tribunal thought it to mean. Unless the import of accessories was permitted by an import licence, the same could not be regarded as having been legally or validly imported. It is clear from the facts stated hereinabove that the value of the machinery disclosed in the Bill of Entry imported was less than the value of the accessories. In the Bill of Entry, the value which was given was only that of the machines which had been imported and the value of the household articles as well as the accessories including the Fax machine was not included. The Bill of Entry also did not indicate that any parts or accessories in addition to the machines were being imported. There can, therefore, be little doubt that these accessories were sought to be smuggled in and the action of the Customs authorities did not call for any interference by CEGAT.

11. In this view of the matter, the Collector was right in coming to the conclusion that the import of the said items was without any licence and the same was liable for confiscation.

12. For the aforesaid reasons, the appeal is allowed. The judgment of the CEGAT is set aside and that of the Collector is restored. The appellant will be entitled to costs.