

B. Arunkumar and Co. Vs. Union of India and Others

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Court : Mumbai

Decided On : Feb-03-1986

Reported in : 1986(9)ECC153; 1988(19)LC329(Bombay); 1987(30)ELT903(Bom)

Judge : M.L. Pendse, J.

Acts : Imports (Control) Order

Appeal No. : Writ Petition No. 1188 of 1985

Appellant : B. Arunkumar and Co.

Respondent : Union of India and Others

Judgement :

1. The petitioners No. 1 are a partnership firm carrying on business of importing rough uncut and unset diamonds, polishing the same and exporting the polished diamonds. The petitioners had obtained an Imprest Licence dated June 29, 1981 for value of Rs. 6,53,23,200/- from the Office of the Joint Chief Controller of Imports and Exports for importing diamonds with the condition to re-export within a period of six months from the date of clearance of first consignment. On March 4, 1982, the petitioners entered into an irrevocable agreement with M/s Jain Sudh Vanaspati Limited, New Delhi to issue them letter of authority for authorising import of goods under non-debit scheme as per Para 183(V) of Import Policy of 1981-82. The letter of authority enabled M/s Jain Sudh Vanaspati Limited to import certain permissible goods for sale to actual users.

On June 5, 1981, the import of tallow of any animal original was canalised vide public notice No. 29/81 and consequently the item of tallow of any animal original had been removed Appendix 10 of Import Policy Book for the year April 1981 to March 1982.

2. M/s. Jain Sudh Vanaspati Limited imported beef tallow and the Customs authorities did not permit clearance as it was not covered by the licence which M/s Jain Sudh Vanaspati Limited had secured from the petitioners. The goods were confiscated by the Customs authorities and thereafter were cleared on payment of certain amount as directed by the Customs authorities. On December 12, 1983, a criminal prosecution was launched against M/s Jain Sudh Vanaspati Limited, its Directors and the petitioners in the Court of Chief Metropolitan Magistrate, New Delhi alleging commission of offence under Section 120B of the Indian Penal Code read with Section 5 of the imports and Exports (Control) Act. The accused were charged by the Delhi High Court in revisional proceedings came to the conclusion that none of the accused including the petitioners could be charge-sheeted and thereupon, the complaint was quashed. The complainant did not take any further steps to challenge the legality of the order of Delhi High Court. The order of discharge was passed on February 8, 1985.

3. On June 30, 1985, the respondent No. 2 served show cause notice on the petitioner alleging contravention of provisions of Clause 8(1)(f) and (g) of the Imports (Control) Order. The validity of show cause notice is under challenge in this petition under Article 226 of the Constitution of India.

4. Shri Desai, learned counsel appearing on behalf of the petitioners, urged that the show cause notice issued by respondent No. 2 is entirely without any justification and shows clear non-application of mind. The learned counsel urged that the licence was issued to the petitioners after June 5, 1981 when import of beef tallow was canalised, with the result that the beef tallow could not have been imported by M/s Jain Sudh Vanaspati Limited under the licence. Shri Desai submits that the Customs authorities rightly confiscated the goods, but ultimately cleared it on payment of penalty and that clearance could not be deemed to be a clearance under the licence. In fact, the licence was not even debited. The

petitioners were, thereafter prosecuted in a criminal court but were discharged on the finding that the petitioners had nothing to do with the import of beef tallow. In spite of decision of the Criminal Court, the respondent No. 2 had issued show cause notice which is not sustainable. In my judgment, the submission of Shri Desai is correct and deserves acceptance. The facts set out hereinabove unmistakably establish that respondent No. 2 had proceeded to issue show cause notice without any application of mind. In case, the licence granted to the petitioners did not permit import of beef tallow as it was issued subsequent to June 5, 1981 and beef tallow as it was not imported on the strength of the said licence, it is difficult to appreciate how it could be even suggested that the petitioners have abetted import of beef tallow. In my judgment, the show cause notice is wholly misconceived and deserves to be quashed.

5. Accordingly, petition succeeds and rule is made absolute in terms of prayer (a). In the circumstances of the case, there will be no order as to costs.

6. Shri Bulchandani applies for stay of operation of the order. Stay refused.