# Radhakrishna RamnaraIn Private Ltd. Vs. Chief Controller of Imports and Exports and ors.

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**SooperKanoon Citation** : sooperkanoon.com/336058

**Court** : Mumbai

**Decided On :** Oct-16-1979

**Reported in** : 1982(10)ELT182(Bom)

**Judge** : M.L. Pendse, J.

**Acts** : Export (Quality Control and Inspection) Act, 1963 - Sections 6 and 7; P.V.C. Leather Cloth (Inspection) Rules, 1966; Constitution of India - Article 226

**Appeal No.** : Misc. Petition No. 1228 of 1975

**Appellant** : Radhakrishna RamnaraIn Private Ltd.

**Respondent** : Chief Controller of Imports and Exports and ors.

**Advocate for Def.** : R.L. Dalal and ;R.L. Mukherjee, Advs.

**Advocate for Pet/Ap.** : D.R. Dhanuka and ;J.P. Deodhar, Advs.

**Judgement** :

1. The petitioners are carrying on business of manufacturing P.V.C. leather cloth and are registered with the Plastics and Linoleums Export Promotion Council as registered exporters of the P.V.C. Leather cloth.

2. The Government of India has declared an export policy. The exporters are assured of cash assistance and replenishment import licenses for registered exporters. The petitioners who are the registered exporters, in pursuance of this policy entered into contracts with M/s. Rexmore Ltd., Liverpool, England to supply P.V.C. leather cloth in large quantity. The petitioners exported the P.V.C. leather cloth to the tune of Rs. 38,66,486.65 during the period from July 1971 to December 1971. The Government of India issued a Notification dated August 6, 1966 in exercise of the powers conferred by Section 6 of the Export (Quality Control and Inspection) Act, 1963 (hereinafter referred to as the 'Act') notifying that the P.V.C. leather cloth shall be subject to inspection prior to its export. The Notification defines 'P.V.C. leather cloth' in clause 3 of the Notification and it reads as under :-

'In this notification 'P.V.C. Leather Cloth' means cloth made of cotton, rayon, nylon or synthetic fibres, to which a layer of polyvinyl chloride composition has been applied either on one or both sides'.

The Petitioners, while exporting the goods, declared the goods as 'cotton fabric coated P.V.C. leather cloth' and the description of the goods was accepted by the Central Excise Authorities. Prior to the export, the goods were examined by the Textile Committee, which is an establishment of the Government of India and an inspection certificate was issued on July 27, 1971 to the effect that the goods exported were P.V.C. leather cloth. As per the notification dated August 6, 1966, the goods were required to be examined by an Export Inspection Agency before the export. The goods proposed to be exported by the petitioners were inspected by the Export Inspection Agency established by the Government of India under Section 7 of the Act. The Agency issued a certificate dated December 20, 1971 certifying that the consignments of the P.V.C. leather cloth have been duly inspected and found to be in accordance with the export of the P.V.C. Leather Cloth (Inspection) Rules, 1966 and was also found conforming to the specifications stipulated in the export contract and, therefore, were declared to be export-worthy. On receipt, of these two certificates, the petitioners submitted the shipping bills and the goods were exported as mentioned hereinabove between April 1971 to March 1972 after the Customs authorities accepted the certificate.

3. The Petitioners, as per the Import Policy for registered exporters, made two applications dated November 17, 1971 and March 30, 1972 for cash assistance and import replenishments. The applications were filed before the Joint Chief Controller of Imports and Exports. The applications were turned down on the ground that the goods exported were non-fabric cotton textile items and, therefore, was not P.V.C. leather cloth. The petitioners carried appeal before the Controller of Imports and Exports (Appeals) and that appeal was also dismissed by an order dated December 27, 1972. The appellate order merely states that the matter was placed before the local Classification Committee and in pursuance of their decision, the rejection of the claim of the Petitioner was proper. The appellate authority also mentions that his decision has received the approval of the Joint Chief Controller. The Petitioners carried a further appeal and the Second Appeal was disposed of on July 17, 1975 and communicated to the petitioners by a letter which inter alia states that the exported product as given in the shipping bill is cotton cloth to which Polyvinyl Chloride composition has been applied and that cannot be treated as P.V.C. leather cloth. These orders of the Controller of Imports and Exports are under challenge in this petition filed under Article 226 of the Constitution of India.

4. Mr. Dhanuka, the learned counsel appearing in support of the petition, submitted that the three authorities below have clearly overlooked the Notification dated August 6, 1966 and have proceeded to deprive the petitioners of their valuable rights of cash replenishment and replenishment of import licences by relying upon some report of local Committee. The learned counsel submitted that the petitioners are the manufacturers of P.V.C. leather cloth and are registered exporters under the Import Policy. The Petitioners have entered into contracts with the foreign buyers for the sale of P.V.C. Leather cloth and the export was effected after securing the requisite certificates necessary under the Act and after satisfying the appropriate authorities that the exported product was P.V.C. leather cloth. Mr. Dhanuka is right in his submission that the Notification dated 6, 1966 clearly defines which product can be described as P.V.C. Leather cloth. The product exported by the petitioners and described in the shipping bills is 'Cotton cloth to which polyvinyl chloride composition has been applied' and that squarely falls within the expression defined under the Notification. Mr. Dhanuka submits that not

only the notification supports him but the two certificates given by the Export Inspection Agency and by the Textile Committee prior to the date of the export establishes his case beyond any doubt. In my judgment, the submission of the learned counsel is just and must be accepted.

5. Mr. Dalal, the learned counsel appearing on behalf of the respondents, submitted that the certificates relied upon by the petitioners cannot be a basis for grant of relief as claimed in the petition. The learned counsel heavily relied upon the return filed by G.R. Nair, Deputy Chief Controller of Imports and Exports, Bombay on October 6, 1979 and submitted that after the petitioners made claim for replenishment as provided by the Import Policy, the Government felt certain doubts about the classification of the goods exported and, therefore, a Committee was constituted, known as Classification Committee, to decide the issue. According to the contents of paragraph 11 of the return, the Classification Committee decided to classify the exported item under N-2 of the relevant policy and not under C.32.2 P.V.C. leather cloth as claimed by the petitioners Mr. Dalal wanted to place reliance upon the minutes of the Committee and submit that the product exported by the petitioners was not P.V.C. Leather cloth. In my judgment, the entire effort of the Government and the learned counsel if misconceived. It is difficult to appreciate how a Classification Committee can ignore the two certificates granted by the authorities in exercise of the statutory powers and on the basis of which the petitioners had exported the goods. It is equally difficult to conceive how a Classification Committee can ignore the definition of P.V.C. leather cloth given under the Notification dated August 6, 1966 and deprive the petitioners of their right of replenishment provided by the Import Policy. Mr. Dalal wanted to read the minutes of the Committee but I have declined to go into it.

6. Mr. Dhanuka is right in his submission that when the petitioners filed an appeal which was a statutory right, the appellate authority instead of applying its mind to the issue raised, delegated its power to a Committee and then blindly relied upon its conclusion with an endorsement that it has got the sanction of his Chief. In my judgment, it was not permissible for the appellate authority to delegate this power and the conclusion which the Classification Committee arrived at behind the back of the petitioners is not binding on the petitioners or on this Court. In my judgment

the Classification Committee cannot decide to by-pass the assurance given under the Import Policy to the registered exporters. The conclusion of the Committee that the goods exported by the petitioners was not P.V.C. Leather cloth is wholly wrong and contrary to the material on record. Mr. Dhanuka is right in his submission that the substantive rights had accrued to the petitioners and the goods were exported on the assurance given by the Government under the Import Policy and the rights which had accrued cannot be taken away by an administrative fiat. The reliance by the learned counsel on the decision of the Supreme Court in the case of The Union of India and others v. M/s. Anglo Afghan Agencies etc. reported in A.I.R. 1968 S C 718 is very appropriate and entirely supports the petitioners' claim. In my judgment, all the three authorities below were clearly in error in depriving the petitioners of the reliefs claimed.

7. Accordingly, the petition succeeds and the rule is made absolute in terms of prayers (a) and (b) of paragraph 23 of the petition. The respondents are directed to give the requisite cash assistance worth Rs. 5,50,962.85 within a period of 3 months from to day and to give import licences worth Rs. 16,35,236.24 prior to March 31, 1980. In the circumstances, there will be no order as to costs.