Navsari Cotton and Silk Mills Ltd. Vs. Union of India

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Court : Mumbai

Decided On : Jul-20-1993

Reported in : 1993LC588(Bombay); 1993(68)ELT730(Bom)

Judge : A.P. Shah and ;M.L. Pendse, JJ.

Acts : Central Excise Tariff Act, 1985

Appeal No. : Writ Petition No. 656 of 1984

Appellant : Navsari Cotton and Silk Mills Ltd.

Respondent : Union of India

Advocate for Def. : Shri J.P. Deodhar, Adv.

Advocate for Pet/Ap. : Shri J.J. Bhatt, Adv., i/b., ;M/s Malvi Ranchoddas & Co.

Judgement :

Pendse, J.

1. By this petition filed under Article 226 of the Constitution, the petitioners are challenging legality to show cause notice dated May 7, 1983 issued by Assistant Collector of Customs, Bombay calling upon the petitioners to show cause why the imported goods should not be confiscated under Section 111(d) of the Customs Act and the penalty should not be imposed under Section 112 of the Act. The facts

giving rise to the issuance of show cause notice are not in dispute and are required to be briefly stated to appreciate the grievance of the petitioners.

2. The petitioners is an industrial undertaking covered by Entry 23 of the First Schedule of Industries (Development and Regulation) Act, 1951. The petitioners have been issued an industrial licence by the competent authority on August 8, 1957. The petitioners are permitted to manufacture textiles made wholly or in part of cotton, including cotton yarn hosiery and rope. The licence was issued in accordance with Entry 23(1) of First Schedule to Industries (Development and Regulation) Act, 1951.

3. In pursuance of the licence granted, the petitioners imported consignment of 23,898 tonnes of Partially Oriented Yarn comprising of 966 packages. The petitioners claimed clearance under OGL provision at Appendix 10(1) read with Para 24 of the Import Policy April to March of the year 1982-83. The Assistant Collector of Customs declined to give clearance to the imported consignment and served the impugned show cause notice. The show cause notice inter alia recites that the licence issued to the petitioners under Entry 23(1) of the First Schedule is not for manufacture of textiles made wholly or in part of synthetic, artificial (man-made) fibres including yarn and hosiery of such fibres. The show cause notice claims that the licence is only for the manufacture of cotton yarn and cloth and the industrial licence does not authorise the use of Polyester Filament Yarn.

4. Shri Bhatt, learned Counsel appearing on behalf of the petitioners, submitted that the impugned show, cause notice suffers from serious infirmities, and the Assistant Collector's assumption that the licence in favour of the petitioners does not entitle import of Polyester Filament Yarn is erroneous. We find considerable merit in the submission of the learned Counsel. Apart from the plain reading of licence issued under Entry 23(1) of the First Schedule to the Act, the case stands concluded in view of notice dated February 15, 1982 issued by Government of India, Ministry of Commerce. The notice recites that in accordance with the import policy as amended, the import of Polyester Filament Yarn based flat, first quality (fully/partly reoriented) is allowed under OGL to actual users (industrial) in accordance with the conditions laid down. In view of the notice issued by the Chief

Controller of Imports and Exports, it is obvious that the show cause notice was issued by the Assistant Collector under misconception and consequently the Assistant Collector had no jurisdiction to issue the impugned show cause notice. The show cause notice is therefore required to be quashed.

5. Accordingly, petition succeeds and rule is made absolute in terms of prayer(s). The bond furnished by the petitioners to stand discharged. In the circumstances of the case, there will be no order as to costs.