

Oriental Containers Ltd. Vs. Union of India (Uoi)

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Court : Mumbai

Decided On : Mar-07-2003

Reported in : 2003(2)ALLMR858; 2003(5)BomCR663; 2003LC550(Bombay); 2003(157)ELT503(Bom)

Judge : V.C. Daga and ;J.P. Devadhar, JJ.

Acts : [Customs Act, 1962](#) - Sections 111

Appeal No. : Writ Petition No. 3000 of 1988

Appellant : Oriental Containers Ltd.

Respondent : Union of India (Uoi)

Advocate for Def. : R. Asokan and N.V. Masurkar, Advs.

Advocate for Pet/Ap. : P. Sancheti, Adv., i/b., B.K. & Girdharlal

Disposition : Petition allowed

Judgement :

J.P. Devadhar, J.

1. In this petition, the petitioners challenge the order in original dated 9-6-1988 (issued on 16-9-1988) passed by the then Collector of Customs, Bombay seeking to confiscate the goods imported by the Petitioners under Section 125 of the

[Customs Act, 1962](#) ('Act' for short) with an option to redeem the same on redemption fine of Rs. 28,00,000/-.

2. The petitioners inter alia manufacture containers and for that purpose import tin sheets from time to time. On or about 24th August, 1987 the petitioners entered into a contract with an American Firm for import of 1,000 metric tonnes of prime quality tin plate. On entering into the contract, the petitioners opened irrevocable letter of credit to cover the value of 1000 metric tons of tin plate prime. The foreign supplier shipped 388 bundles of Tin Plate Prime equivalent to 482.63 metric tonnes from Mexico on vessel s.s. 'LUCKY SCOPE' and the said vessel arrived at Bombay some time in January, 1988. The certificate of origin, bill of lading, packing list, test certificate and the invoice issued by the foreign supplier specifically state that the goods shipped were Tin Plate prime as per the terms of the contract. On arrival of the said ship, the Petitioners filed the Bill of Entry seeking clearance of Tin Plate Prime with the benefit of exemption Notification No. 57/87, dated 1-3-1987 read with Notification No. 342 of 1976, dated 2nd August, 1976.

3. On 25th February, 1988 and 26th February, 1988, 10% of the imported goods were examined by the Customs Authorities and on examination, it was found that the goods imported were Tin Plate Waste/Waste instead of Tin Plate Prime as declared in the Bill of Entry. In view of this discrepancy which was not known to the Petitioners, the Petitioners sought permission to place the goods in a Bonded Warehouse. On 3rd March, 1988, the said consignment was provisionally assessed and the nine replenishment licences furnished by the Petitioners in respect of the Tin Plate Prime were provisionally debited by the Customs authorities. Accordingly, Petitioners have paid the provisional customs duty of Rs. 30,98,492/- payable on Tin Plate Prime. Thereafter at the instance of the Petitioners, the goods were re-examined and even on re-examination, it was found that the goods shipped were Tin Plate Waste/Waste having various defects. The Petitioners waived the show cause notice and sought personal hearing. At the personal hearing, the Petitioners pointed out that they had suffered heavy losses due to the inferior quality of the material supplied by the shippers, even though the contract was for supply of Tin Plate Prime. It was submitted that as the foreign

supplier had cheated them they have cancelled the contract for the supply of balance quantity of the Tin Plate Prime. It was submitted that the Petitioners have paid the price of Tin Plate Prime, but have received Tin Plate Waste which is of inferior quality and have also paid customs duty payable on Tin Plate Prime which is higher than the duty payable on Tin Plate Waste. It was submitted that since there was no mala fide intention on the part of the petitioners, a sympathetic and lenient view be taken and the goods be released.

4. By their letter dated 9th August, 1988 addressed to the Counsel General of America as well as Mexico respectively, the Petitioners pointed out the facts as to how the Mexican Firm has cheated the Petitioners and requested the Counsel General of America to use their good offices in the matter to enable the Petitioners to get the compensation from the Mexican Firm towards the differential price between the Tin Plate Prime and Tin Plate/Waste. The petitioners had also sought permission from the Reserve Bank of India to approach the International Court to file a case against the foreign supplier.

5. By the impugned order dated 9th June, 1988 issued on 16th August, 1988, the then Collector of Customs, Bombay held that the imported goods were Tin Plate/Waste. Whereas the Bill of Entry filed by the petitioners were for tin plate prime. Thus, there was mis-description of the goods. Moreover the REP licences furnished by the petitioners were for the tin plate prime whereas the goods imported were tin plate waste. Since the licences furnished were not valid for clearance of the imported goods it was held that the said goods were liable for confiscation under Section 111(d) of the said Act. However, the Collector gave an option to redeem the said goods on payment of redemption fine of Rs. 28,00,000/=. The Collector of Customs did not levy penalty on the petitioners under Section 112 of this Act as it was not a case of the Department that the import of the Tin Plate/Waste was made at the instance of or on the directions of the Importer nor any mala fides or intent has been established on the part of the importer. It was held that the goods being of Mexican origin, the petitioners were entitled to concessional rate of duty under Notification 27 of 1987 read with 342 of 1976. Challenging the said order of confiscation, the Petitioners have approached this Court by way of writ under Article 226 of the Constitution of India.

6. While admitting this petition, this Court directed the Respondents to allow the clearance of the goods on the petitioners furnishing the requisite licence for clearance of Tin Plate/Waste and on furnishing bank guarantee. Accordingly, the petitioners have cleared the imported goods pursuant to the interim orders of this Court by furnishing licences which permit import of Tin Plate/Waste.

7. Mr. Sancheti, learned Counsel appearing on behalf of the petitioners submitted that when it is accepted by the Revenue that there was no malafide intention on the part of the petitioners to import tin plate waste and the petitioners are exonerated from the penal charges, the Collector of Customs was not justified in confiscating the goods. He submitted that the contract entered into by the petitioners with the foreign supplier was for the supply of Tin Plate Prime and as per the terms of the contract, letters of credit opened by the petitioners was for tin plate prime. Even, the documents issued by the foreign supplier clearly show that the contract was for supply of Tin Plate Prime and merely because the foreign supplier has fraudulently supplied instead of Tin Plate Prime, the Customs Authorities are not justified in confiscating the goods. It was submitted that as soon as the petitioners came to know that the goods supplied are not Tin Plate Prime but Tin Plate/Waste, the petitioners have taken steps to cancel the contract for the supply of the remaining quality and also taken steps to initiate legal action against the foreign supplier. It is an admitted fact that on the date when the petitioners filed the Bill of Entry for clearance of the goods, the petitioners were not aware of the fact that the goods supplied were Tin Plate/Waste. On coming to know that the goods supplied are Tin Plate/Waste, the petitioners while initiating action against foreign supplier have offered to clear the goods by furnishing the licences for Tin Plate/Waste and as per the interim orders of this Court, the petitioners have cleared the said goods by furnishing the requisite licence for clearance of Tin Plate Waste. Under the circumstances, it was submitted that when the petitioners have suffered financially by receiving Tin Plate/Waste on payment of price of Tin Plate Prime and have also paid the customs duty for Tin Plate Prime confiscation of goods is wholly unjustified.

8. Mr. Asokan, learned Counsel appearing on behalf the Respondents submitted that admittedly, the goods imported were Tin Plate/Waste and the Bill of Entry filed

by the petitioners was for Tin Plate Prime. Therefore, the goods imported were not as per the description set out in the Bills of Entry filed by the petitioners and even the licence submitted by the petitioners were not applicable for clearance of the Tin Plate/Waste. Under the circumstances, it was submitted that the Collector of Customs was justified in confiscating the goods with an option to clear the same on payment of redemption fine.

9. Having heard the Counsel on both the sides, we are of the opinion that in the present case, it is admitted by the Customs authorities that the petitioners are not party to the fraud and there was no mala fide intention on the part of the petitioners in importing the Tin Plate/Waste instead of Tin Plate Prime. In fact, the petitioners have paid to the foreign supplier the price of tin plate prime and in return got tin plate waste. The petitioners have paid the customs duty payable on Tin Plate Prime. Under the circumstances, when the petitioners are innocent victims of the fraud played by the foreign supplier and the petitioners have suffered double jeopardy by paying the price and the duty payable on Tin Plate Prime, on account of the fraud committed by the foreign supplier, the petitioners could not be held to be guilty of violating any of the provisions of the Act and hence confiscation of the goods is not justified. It is pertinent to note that the rate of customs duty on Tin Plate Prime is higher than the rate of customs duty payable on Tin Plate /Waste. As soon as the petitioners came to know about the fraud played by the foreign supplier, they have taken effective steps and have cleared the goods on furnishing licenses which permit clearance of Tin Plate waste. When the petitioners had placed an order for import of tin plate prime and have paid the price for Tin Plate Prime, no fault could be found with the petitioners in furnishing Bill of Entry and licences for clearance of tin plate prime. In the present case, when the petitioner has been given a clean chit and there is no violation of the provisions of the Customs Act committed by the petitioners and no revenue loss is caused by wrong supply of goods by the foreign supplier, the Collector of Customs was not justified in confiscating the goods.

10. In this view of the matter, we are of the opinion that confiscation of the goods was wholly unjustified and the order impugned in this petition is liable to be quashed and set aside. Accordingly, the Rule is made absolute in terms of prayer

Clause (a) with no order as to costs.

11. The bank guarantees furnished by the petitioners pursuant to the interim orders of this Court shall stand cancelled and the same be returned to the petitioners within 4 weeks from the receipt of this order.

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