

Telco Ltd. Vs. Dir. of Enforcement of the Fera Board

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Court : Mumbai

Decided On : Mar-20-1999

Reported in : 2000(68)ECC253; 2000(115)ELT618(Bom)

Judge : Shafi Parkar, J.

Acts : [Foreign Exchange Regulation Act, 1973](#) - Sections 8(3) and 8(4); Customs Act; Customs Regulations

Appeal No. : First Appeal No. 918 of 1982

Appellant : Telco Ltd.

Respondent : Dir. of Enforcement of the Fera Board

Advocate for Def. : A.G. Toraskar, AGP

Advocate for Pet/Ap. : S.A. Divan and ;H.N. Vakil, Advs., i/b., ;Mulla and Mulla

Disposition : Appeal allowed

Judgement :

Shafi Parkar, J.

1. The Appellants have taken exception to the penalty imposed by the two authorities below, imposing penalty of Rs. 2,500/- on the appellants for the alleged contravention of Sub-sections (3) and (4) of Section 8 of the [Foreign Exchange](#)

Regulation Act, 1973.

2. The facts leading to the present controversy, briefly stated, are as follows :

The appellants held Import Licence dated 9-8-1972 for a c.i.f. value of Rs. 20 lakhs covering the import of spare parts required for their plant /machineries. The said Licence was issued under the Import Policy No. AM-73. The appellants had, pursuant to the said import licence, imported spare parts i.e. jolt valves, vibrator valves, squeeze valves and lift valves from Germany on 23rd March 1974 for their moulding machines installed at Jamshedpur. The total value of the goods imported was c.i.f. Rs. 56,389/- for which they had opened letter of credit with the Bank of Baroda who are, admittedly, authorised agents under the provisions of the FERA, 1973. On 9-7-1974 the Customs Authority held that the appellants had exceeded the limit under the import licence to the extent of Rs. 26, 389/- as the same were not covered by the subject licence on the ground that the appellants were allowed to import six items each valued at Rs. 5,000/- that is to say up to the total limit of Rs. 30,000/- for all items together. As the value of the c.i.f. imports was Rs. 56,389/- the Customs Authority held that the import of the goods to the extent of Rs. 26,389/- was not covered by the subject licence and, therefore, the appellants were allowed to clear the goods on payment of redemption fine of Rs. 13,150/-. The said order, when challenged by the appellants before the Collector of Customs, was confirmed on 6-5-1977. However, in Revision filed before the Central Government, the penalty was reduced to Rs. 6,500/- by the order dated 7-11-1979.

In the meantime, i.e. after the order of the Collector of Customs, the Directorate of Enforcement, FERA, by its order dated 4-10-1978 sought information from the appellants with regard to the said import which was furnished on 20th December, 1978. Thereafter, show cause notice was issued under the provisions of the FERA to the appellants on 5-5-1980 to which reply was filed by the appellants on 26th June 1980. The Deputy Director i.e. Respondent No. 2 herein by his order dated 17-2-1981 held that the appellants contravened the provisions of Sections 8(3) and 8(4) of the FERA, 1973 and, therefore, imposed the penalty of Rs. 2,500/- on the appellants. The said order was challenged by the appellants before the FERA

Board in Appeal No. 132 of 1981. The FERA Board by its order dated 28th August 1982 upheld the order of the 2nd Respondent imposing the penalty of Rs. 2,500/- on the appellants after confirming the finding that there was contravention of the FERA provisions viz. Sections 8(3) and 8(4) of the FERA. The said orders have been challenged in this First Appeal.

3. Mr. Divan, the learned Counsel appearing on behalf of the appellants, contended that there was no FERA violation at all. He submitted that the goods in question were imported under the import licence and the value of the said imported goods was paid through the authorised agents i.e. Bank of Baroda. He further pointed out that the foreign exchange was acquired for the purpose of import of the aforesaid goods i.e. jolt valves, vibrator valves, squeeze valves and lift valves under the import licence dated 9-8-1972 issued to the appellants and the foreign exchange was utilised for the purpose of the said imports only. Secondly, he contended that the lower authorities have not pointed out any contravention with regard to the kind, quality or quantity of the goods which were imported by the appellants for which the foreign exchange was acquired. According to him the letter of credit was opened with the authorised dealer i.e. Bank of Baroda for the purpose of import of their State-wise goods which were covered by import licence. The particulars of the spare parts which were imported under the said import licence were furnished to the authorised agents, under the provisions of the FERA, i.e. Bank of Baroda who after verifying the same and satisfying themselves had paid value of the imported goods. He further pointed out that the authorities have not been able to show that the goods imported did not conform to either the kind, quality or quantity specified under the import licence for which the foreign exchange was acquired and the payment was made through the authorised agents. He submitted that the Customs Authority had imposed penalty only because the value of the six items which were imported had exceeded the limit of Rs. 5,000/- each which was prescribed under the Customs Regulations. The goods imported by them were treated as items banned for imports by the Calcutta Customs as per Sl. No. 72 of Appendix 3 of AM 73 of the Policy and, therefore, there was a limit prescribed for the import upto 12/2 % of the value of the licence subject to the condition that the value of each item should not exceed Rs. 5,000/-. It was submitted on behalf of the appellants that they had imported only six items

of valves, as per the permission but the value of each item exceeded Rs. 5,000/- and, therefore, they had to pay penalty under the provisions of the Customs Act. However, there was no contravention to any of the FERA provisions, much less, Sub-sections (3) and (4) of Section 8 of the FERA as the foreign exchange was utilised by the Appellants for the purpose for which it was acquired and the goods which were imported were of the kind, quality and quantity specified by them at the time of acquisition of the foreign exchange while opening the letter of credit with the Bank of Baroda.

4. I find substance in the contention raised on behalf of the appellants. The Deputy Director who imposed the penalty of Rs. 2,500/- by his order dated 17-2-1981 has only considered or gone by the order of penalty imposed by the Customs Authorities and held that the appellants had contravened the provisions of Sections 8(3) and 8(4) of the FERA without demonstrating how the contravention of the said provisions had taken place. The precise reasoning given by the Deputy Director is that as the Customs Authority held that the goods of the balance value of Rs. 26,389/- were not covered by the licence and hence imports were unauthorised, it would follow that the foreign exchange valued at Rs. 26,389/- granted to Telco was utilised for the purpose other than the purpose for which the foreign exchange was granted and, therefore, there was contravention of Sections 8(3) and 8(4) of the FERA. The said authority has not at all shown in what way there was contravention. From the facts narrated above it is clear that the foreign exchange was acquired for the import of valves and the same was utilised for the import of the said items only and not for any other item. Even the appellate authority i.e. FERA Board, while upholding the order of the Deputy Director, has not shown in what way there was contravention of the provisions of Sections 8(3) and 8(4) of the FERA by the appellants. It is not the case of the department that the spare parts imported by the appellants were prohibited. Nonetheless, it is not pointed out that the foreign exchange acquired was not utilised for the purpose for which it was acquired. In fact, the foreign exchange was acquired for the import of the valves which alone were imported by the appellants.

5. Mr. Toraskar, the learned AGP appearing for the respondents also has not been able to point out as to how the appellants can be said to have contravened the

provisions of Sections 8(3) and 8(4) of the FERA, 1973.

6. Mr. Divan relied on the decision of the Supreme Court in the case of Shanti Prasad v. Director of Enforcement reported in : [1963]2SCR297 in which it is held that the provisions under the are quasi-criminal in character and it is the duty of the respondents as prosecutor to make out a case beyond all reasonable doubt that there has been a violation of the law. In this case, as pointed out earlier, the authorities have failed to show the foreign exchange acquired by the appellants was utilised for the purpose other than the one for which it was acquired.

7. Mr. Divan also relied on the decision of the Supreme Court in the case of Hindustan Steel Ltd. v. State of Orissa reported in : [1972]83ITR26(SC) in which the Supreme Court has observed that where there is a technical contravention, the penalty need not be imposed. According to Mr. Divan in this case the appellants who were holding the import licence to the extent of Rs. 20 lakhs had imported spare parts as per the specifications which were given by them, but of the value of Rs, 5,600/- instead of Rs. 5,000/-. The said imports, however, were made bona fide. The Customs Authority had only found that the value of the imported items exceeded slightly for which the penalty was already imposed on the Appellants. Even if there is violation, under the provisions of the Customs Act, it was only technical for which the appellants had paid penalty under the Customs Act.

8. In any way, since the authorities have not been able to show the contravention of the provisions of the FERA, there is no question of imposing penalty on the appellants under FERA. The appeal is thus entitled to succeed.

8. In the result the appeal, is allowed. The impugned orders of Deputy Director of Enforcement dated 17-2-1981, confirmed by the FERA Board in Appeal No. 132/81 by the order dated 28-8-1982 are hereby quashed and set aside.

In the facts and circumstances of the case there will be no order as to costs.