

Jessasingh Uttamsingh Vs. Collector of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-28-1988

Reported in : (1989)(44)ELT693Tri(Mum.)bai

Appellant : Jessasingh Uttamsingh

Respondent : Collector of Customs

Judgement :

1. This appeal is directed against the Order-in-Appeal bearing No.S/49-12/76 SIIB, dated 19-12-1976 passed by the Collector (Appeals) Bombay.
2. The appellants are the Letter of Authority holders. As the Letter of Authority holders, they filed the Bill of Entry on behalf of the licence holder M/s. National Industries Ltd., Hyderabad and sought for clearance of goods comprising of spare parts of agricultural tractors, namely piston rings and gears totally valued at Rs. 20,357/-. They produced the Licence No. 1690126, dated 5-4-1971. The goods, on arrival were bonded. The date of import in this case is 20-5-1972. During the period when the goods were in bond and the clearance were sought for, proceedings were initiated by the Licensing Authority against the licence holder and the licence was cancelled by their I.T.C. order dated 11-7-1972. The said order was issued under Clause 9(c) of the Import (Control) Order. Again another order was issued on 17-11-1972 cancelling the same licence under Clause 9(a) of the Import (Control) Order on the ground that it was obtained by fraud and misrepresentation. Consequent on this cancellation of the licence by the licensing authority, adjudication proceedings were also initiated in regard to the aforesaid

import and order confiscating the goods absolutely was passed by the Assistant Collector under his order dated 30-10-1975 which was taken in appeal before the Collector (Appeals).

The said appeal was rejected by the Collector (Appeals). The appellants have come up before the Tribunal against the order of the absolute confiscation of the goods.

3. Shri VN Deshpande, arguing on behalf of the appellants, contended that the Letter of Authority holders were not a party to any fraud or mis-representation. They had acted bona fide as per the Letter of Authority and opened Letter of Credit in respect of the import. They have, therefore, invested money in import by opening Letter of Credit.

The goods having been absolutely confiscated, they are put to hardship.

He also contended that the department had cleared five consignments from the bond earlier. Only in the case of sixth Bill of Entry, adjudication proceedings have been taken. He also submitted that the licence has not been cancelled retrospectively. The import has taken place when the licence was very much valid and there is no justification for ordering confiscation treating the import as unauthorised. The Letter of Credit has been opened and the goods have been imported under a valid licence and if the licence has been subsequently cancelled, it cannot be given retrospective effect. In this connection, he cited the Bombay High Court judgment in the case of *Bansilal Jessasingh v. Union of India & Ors* in Writ Petition No. 538 of 1981 dated 4-4-1985 reported in 1988 (36) E.L.T. 52 (Bom.). He also cited the appellate decision of the Collector (Appeals) in regard to the very same licence passed by another Collector, wherein he has allowed the appeal and ordered release of the goods. On the basis of the said order of the Collector (Appeals) they also got release of another consignment. In this context, he produced a photo-copy of the Triplicate copy of the Bill of Entry dated 9-2-1981.

4. Shri Deshpande's attention was invited to the Letter of Authority under which only they have come into picture. According to the condition of the Letter of Authority, the Letter of Authority holder will act purely as an agent of the licensee

and the goods imported will be the property of the licence-holder both at the time of clearance through the customs and subsequent thereto. The licence holder will have to ensure that the goods on importation will be delivered to him and shall not be disposed of otherwise. When the learned advocate's attention was drawn to these conditions in the Letter of Authority and was asked as to how the goods could be considered for release to the appellant and whether such an order would not amount to violation of the condition of Letter of Authority, Shri Deshpande contended that this issue was not the basis of the order passed by the authorities below. He was also asked as to whether the judgement cited by him in both the appellate order of another Collector as well as the judgement of the High Court cover this aspect, namely the Letter of Authority holder claiming release of the goods in the facts and circumstances stated, he indicated that this specific aspect has not been considered by those decisions.

5. Shri Mondal, appearing on behalf of the department, contended that the appellant is only a Letter of Authority holder and as per the terms and conditions issued by the Licensing Authority, it is clearly laid down that the appellant is only an agent and his job is to deliver the goods imported to the licence holder and he has no authority to dispose of the goods. In the circumstances, any view taken to the release of the goods to the appellants would be in clear violation of the conditions of the Letter of Authority, especially when the appellants have not taken any steps to get the requisite permission from the Licensing Authority for disposal of the goods otherwise. However, he conceded that this specific aspect has not been considered by the authorities below. He argued that should not justify the release of the goods to the appellants especially when the terms and conditions of the Letter of Authority are quite clear and there is no modification noticed in the form of addendum or corrigendum.

6. I have carefully considered the submissions made on both sides. The first and primary consideration, in this case, should be the entitlement of the appellants for the release of the goods. The order challenged is the order of confiscation of the goods absolutely, and seeking for its release to the appellants. The appellants are admittedly the Letter of Authority holder. The Letter of Authority has been issued by the Licensing Authority themselves. One of the conditions prescribed in the

Letter of Authority is as follows: "The person or concern in whose favour it has been issued, will act purely as an agent of the licensee and the goods imported will be the property of the licence-holder both at the time of clearance through the Customs and subsequent thereto. The licence-holder will have to ensure that the goods on importation will be delivered to him and shall not be disposed of otherwise. The licensee shall not cause or permit the holder of the Letter of Authority to dispose of the goods." Another condition prescribed in the Letter of Authority is as below: "The holder of the authority letter shall clearly indicate on all the relevant Customs documents including the triplicate copy of the Customs Bill of Entry, that the goods have been imported and attested by the Customs authorities." Both the aforesaid conditions clearly envisage that the appellants are not the owner of the goods and are only an agent of the licence holder.

The goods, which have been confiscated, can only be delivered to the importer as per the terms and conditions of the Letter of Authority.

Even the customs documents have to clearly indicate that the goods have been imported by the licence holder, though the Bill of Entry may be filed by the Letter of Authority holder. Hence, if the goods are to be released to the Letter of Authority holder, that would be a dear violation of the terms and conditions of the Letter of Authority. The appellants have Come into the picture, admittedly by virtue of the Letter of Authority and not otherwise. Shri Mondal, in his arguments, also cited the judgment of the Delhi High Court in the case of Jain Exports Pvt. Ltd. v. Union of India & Ors. reported in 1987 (29) E.L.T.page 753 (Del.), wherein one of the points discussed by the Delhi High Court is with regard to the locus standi of the agent. In that context, the High Court observed that the agent cannot have the better rights than the principal. Admittedly the decisions cited by the learned advocate have not considered this issue, namely the claim of the Letter of Authority holder vis-a-vis the terms and conditions of the Letter of Authority. If the said licence has been cancelled, it is for the licence holder to agitate against the cancellation as well as the order of confiscation. Prima facie this is the position flowing from the Letter of Authority. However, to my surprise I find that this basic issue has not been considered by the authorities below. In the interest of justice and in the absence of availability of all the records, namely Bill of Entry, Bill of Lading and other

connected documents it has become necessary for me to remand the case back to the Collector (Appeals) for considering the issue afresh. In view of this position, I set aside the orders of the authorities below and remand the matter to the Collector (Appeals) for consideration of the appellants' locus standi with regard to their claim for release of the goods and also the maintainability of the order of absolute confiscation. While doing so, reasonable opportunity may be given to the appellants for hearing and perusal of records on which the department relies on and pass such orders in accordance with law.

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