

**Uma Textiles Vs. Collector of Customs**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Oct-31-1989

**Reported in :** (1990)LC135Tri(Delhi)

**Appellant :** Uma Textiles

**Respondent :** Collector of Customs

**Advocate for Pet/Ap. :** Shri. Y.N. Chopra Consultant

**Judgement :**

1. The appellants have filed this appeal under Section 129-A(1) of the Customs Act, 1962 against the order-in-original No. 27/87 dated 25.5.87 passed by the Addl. Collector of Customs, New Delhi.

2. The facts of the case are that the appellants wrote to M/s. Likai Nercurdise Ltd. Taipai that they wanted to import 50 tonnes of Viscose Staple Fibre and sought for their offer. The exporters vide their letter dated 30.4.85 offered the appellants the said quantity of fibre at USSl 45 kg and informed them that they were awaiting their orders.

The appellants vide their letter dated 20.5.85 requested the exporters to ship 4 containers at US \$ 1.80 Kg on CAD basis and that they will pay against their documents. The exporters, as a special case, vide their letter dated 15.6.85 agreed to send the goods and sent their indent for 4 containers and also their invoice/contract No. SM-48 dated 15.6.85. The contract was registered on 25.6.85

to the Ministry of Commerce. The contract was for the first quality Viscose Staple fibre off white semi-dull 1.5 Denier 51 mm at 1.12 US \$ per Kg. The exporters also sent their invoice dated 1.8.85 for 56,000 Kgs., 308 bales of the said fibres. However, on 14.10.85 after the goods had been exported by the exporters, they informed the appellants vide their letter dated 14.10.85 that after the shipment of the goods, they had found that by mistake some bales of polyester fibre weighing about 47/48 tonnes had been shipped as some were similar in appearance and that they had asked their Hongkong office to draw documents for viscose only. They asked the appellants either to return the goods or remit the difference of amount. The appellants had before receipt of the above letter, already retired the documents from the Bank. They informed the Assistant Collector vide their letter dated 21.10.85 as to what had happened and that they had asked the exporters to withdraw the entire lot and therefore, were not presenting the documents for retrieving the goods.

3. However, on 2.5.86, a show cause notice was issued to the appellants in which it was alleged that the containers Nos. SCKU 6068297 and 6005302 loaded with 154 bales of Viscose staple fibre weighing 28,000 kgs. were grounded at the ICD Pragati Maidan on 1.10.85. No bill of entry was however, filed by the Importers for clearance of the said goods. On 22.12.85, the containers were opened and the contents of 11 bales were found of Viscose Staple fibre and the remaining 66 bales were concealed behind by stacking the 11 bales of Viscose Staple fibre in front of the container. Representative samples were drawn and sent to the Chief Examiner for test and the chemical test revealed that 132 bales out of 154 bales did not correspond with the goods mentioned in IGM and their description had thus been misdeclared and the appellants tried to evade customs duty of Rs. 17,08,000/- and the goods valued at Rs. 5,60,000/- were liable for confiscation. The statement of Shri Yashpal Prop, of the appellants had been recorded who had stated before the Investigation Agency that the goods were not according to the order booked, he refused to accept the goods and surrendered the goods as abandoned to the Customs and stated that the case may be adjudicated without issue of a show cause notice.

4. After the issue of the show cause notice, the appellants filed a reply vide their letter dated 7.6.86 that Bill of Entry had not been filed by them, as in response from the information from the bank, the appellants had retired the documents without delay. Soon after they received the letter dated 14.10.85 from the exporters informing them that by mistake bales weighing about 47/48 tonnes of polyester fibre had been shipped by them and had advised the appellants to either return the goods and receive the refund amount or remit the differential amount. The appellants on receipt of the said letter brought to the notice of the Asstt. Collector by letter dated 21.10.85 about this fact and hence they did not present the Bill of Entry. The Department had also not given any notice to the appellants under Section 48 after the goods had been loaded after the expiry of the stipulated period. The appellants contended in their reply that they had informed the Customs Department about the said mistake and the Department had opened the consignments on 22.12.85 only after the receipt of their letter dated 21.10.85. The appellants further had explained that they wrote another letter to the Asstt. Collector in which they referred to the earlier letter dated 21.10.85 enclosing the copies of correspondence they had with their exporters. The Asstt.

Collector replied to their letter by a letter dated 15.3.86 in which the Asstt. Collector stated that he had not received the earlier correspondence from the appellants. Therefore, the appellants sent the copies of the letter dated 21.10.85 and 20.3.86. The appellants submitted that the Asstt. Collector after receiving all this correspondence had issued the show cause notice. They submitted that they had not committed any misdeclaration of the goods as they had not filed Bill of Entry and question of their action being proceeded against them did not arise.

5. The Collector of Customs after holding the proceedings of the appellants as well as the Shipping Corporation, passed the impugned order. The Collector of Customs in the impugned order confiscated 154 bales of Polyester fibre and Viscose Staple fibre contained in the said containers as unauthorised under Sections 111-F and 119 of Customs Act but however, giving the option to the appellants under Section 125 of the Customs Act to redeem the goods by imposing a fine of Rs. 3 lakhs.

By the impugned order, the appellants were also imposed a penalty of Rs. 2.5 lakhs under Section 112(b) of the Customs Act. However, the Shipping Corporation was absolved of any offence.

6. The appellants in this appeal have stated in their prayer Col.I upholding the goods as abandoned be set aside with the order of penalty of Rs. 2.5 lakhs. The appellants have also challenged the imposition of penalty of Rs. 2.5 lakhs.

7. The Addl. Collector of Customs in the impugned order has not accepted the reply of appellants. He has also not accepted the explanation of the appellants in having sent a letter dated 21.10.85 and has disbelieved the certificate of posting for having sent a letter. On the basis of the Department submission that the Department had not received such a letter, the Collector of Customs has observed in the impugned order that the Prop. of the firm Sh Yashpal in his statement on 8.4.86 had not mentioned about the wrong shipment at any point of time. He had held "although no documents could be produced by the Department to show that the importers had manipulated the transaction to import polyester fibre or had full knowledge of polyester fibre actually shipped, there are certain factors which raise doubts about the genuineness of the transaction. First the goods were shipped from Hongkong on 30.7.85 and the fact i.e. mix up of viscose staple fibre with polyester fibre was confirmed by the supplier only on 14.10.85 i.e. after about two and a half months. If it were a genuine mistake, it would have been intimated to the importers immediately after shipment without taking such a long time since it involved the question of adjustment of payment on account of the differential price and also extra expenses on account of freight. The delay in intimating the wrong shipment to the importer is not understandable and appears to be an "afterthought" The Addl. Collector has held that it has been a deliberate act on the part of the appellants and in order to establish their ignorance had taken up these defences.

8. Shri Y.N. Chopra Consultant appearing for the appellants, submitted that the appellants had not filed Bill of Entry at all. He stated that the appellants had packed the goods and had informed the Department about the mix up of the goods and their intention not to release the goods well in time. The goods had been

examined only after the appellants bringing to the knowledge of the appellants<sup>1</sup> about the mix up of the goods, they had not committed any misdeclaration as they had no knowledge of the goods at all. The order passed by the Addl.

Collector suffers from several errors. The Addl. Collector has not held that the letter dated 20.10.85 as a fabricated document. Further the Consultant submitted that the Prop. of the firm had in his statement to the Department, clearly stated that he was not releasing the goods by not filing the Bill of Entry as the goods were not sent according to his specification. Even before the issue of show cause notice, the appellants had written to the Department and given them the copies of these letters to the exporters. When the entire examination of the goods have been dealt with only after the information given by the appellants, the Consultant submitted that it is strange that the Addl.

Collector should hold against the appellants that they were trying to misdeclare the goods and clear the same. They had detained the goods and hence the question of imposing the penalty in the matter did not arise.

9. Shri R.M.Ramchandani, SDR submitted that the Prop. of the firm, Sh Yashpal had not informed the Department of his statement about the letter of exporter dated 21.10.85 and there were reasons to disbelieve the appellants. The Addl. Collector was justified in imposing the penalty of Rs. 2.5 lakhs as the value of the goods was more than Rs. 15 lakhs. He reiterated that the reasoning of the Addl. Collector was correct and sought for upholding the impugned order.

10. We have heard both the sides and carefully examined the records.

The Addl Collector has admitted in the impugned order as extracted (supra) that the Department could not produce any document to show that the importer had manipulated the transaction to import polyester fibre or had full knowledge of polyester fibre actually shipped by them but the Addl. Collector however, did not accept the statement of the appellants and held the defence as an "afterthought". We find that the Addl. Collector has not given any finding with regard to the genuineness or otherwise of the letter dated 21.10.85 of the exporter.

In fact, he has observed in the para extracted above, that the importer had not released the goods as it would have involved the question of adjustment of payment on account of differential price and also extra expenses on account of freight. It follows that the Addl. Collector is blowing hot and cold. He relies upon the letter dated 21.10.85. He comes to the conclusion regarding the intention of the appellant of not clearing the goods when it comes to giving the benefit of that letter dated 21.10.85, the Addl. Collector merely says that the Department had confirmed that such letter was not received by them. It is an admitted fact in this case that the appellants had refused to clear the goods on the ground that it did not specify to the order placed by them. The goods had come to be examined only after the importer had brought to the knowledge of the Department about the mix up of goods which fact is clearly borne out from the impugned order. When this point is so very clear, it is difficult to conclude that the appellants would have deliberately misdeclared the goods with a view to intentionally and deliberately clear the same unauthorisedly. The allegation that they had contravened the provisions of Section 3(1) of the Imports and Export Control Act, 1947, Section 3 of Imports (Control) Order, 1955 which is deemed to be a contravention of Section 11 of the Customs Act, 1962, cannot be upheld. The contravention of these sections would arise when the appellants would have presented the Bill of Entry and made all arrangements for clearance of the goods with wilful intention of importing wrong goods. The appellants have acted very fairly and refused to clear the goods. The Addl. Collector had drawn certain conclusions without any basis. He clearly admits that the Department has not produced any documents to prove the manipulation of the transaction to import the goods, and that be the case, the contravention of the above sections is not sustainable. Suspicion however, grave cannot take the place of proof. In this case, even such a suspicion cannot be drawn. The reasoning of the Addl. Collector seems to be unreasonable. As such, the order is liable to be set aside.

Penalty of Rs. 2.5 lakhs imposed on the appellants is set aside. Appeal is allowed.

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