

Krishana and Co. Vs. the Union of India (Uoi) and ors.

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Court : Delhi

Decided On : Jul-13-1987

Reported in : 1988(14)LC135(Delhi)

Judge : B.N. Kirpal, J.

Appeal No. : C.W. 66/73

Appellant : Krishana and Co.

Respondent : The Union of India (Uoi) and ors.

Disposition : Petition dismissed

Judgement :

B.N. Kirpal, J.

1. The challenge in this writ petition is to the orders of the Government of India by which confiscation of the Ball Bearings imported by the Petitioners had been ordered though, in lieu of confiscation, option was given to the petitioners to clear the goods on Payment of fine of Rs. 50.000/-.

2. The State Trading Corporation of India Ltd. had obtained a license for the import from Bulgaria of 'Non-Restricted Types of Ball Bearings of an approximate value of Rs. 2,00,000/-. A letter of authority was endorsed by the State Trading Corporation of India Ltd. in favor of the petitioners authorising the petitioners to import the

permissible goods.

3. On the basis of the aforesaid letter of authority and the license the petitioners imported Bulgarian Ball Bearing Type No. 203. The goods arrived at the Calcutta Port and the Customs Authorities were of the opinion that the clearance of the same was not permissible in view of the import policy for the year 1968-69. According to the import policy certain types of the ball bearings were banned. Appendix 14(l)(a) of the said import policy reads as under:

Banned Types of Ball Bearings falling under S. No. 19/11 list

of Ball Bearing of 1' in bore (Internal) Diameter and

below.-----										S.I.	No.
Hoffman No. S.K.F. No. Bearing Dimensions-----										Bore	Outside
WidthDia-----										1	2
-----										3	4
-----										5	6
-----										Deep Groove Single	
Row	Radial	Ball	Bearings	17BCO2	117	6203	17	mm	40	mm	12
mm-----											

According to the Customs Authorities, the ball bearings which were imported by the petitioners had the same dimensions which were prescribed for the ball bearings of S.K.F. No. 6203 and as such the import of these ball bearings was banned.

4. The petitioners protested against the aforesaid decision and contended that the two types of ball bearings were not similar. A certificate dated 17th June, 1970 obtained from the Commercial Counsellor of Bulgaria was sent to the Deputy Collector in which it was inter-alia stated that the Ball Bearing Type No. 203, imported by the petitioners, was not designed on the basis of SKF 6203. Another certificate dated 14th July, 1970 was also obtained by the petitioners from the Deputy Trade Representative of Bulgaria, and the same forwarded to the Customs Authority, in which it was certified that the Bulgarian factory was manufacturing different bearings equivalent to SKF type 6203 which were totally different in design of the Bulgarian bearings type 203. The petitioners further contended that

they produced data before the Deputy Collector showing that the load bearing capacity of the two types of ball bearings was different. Details of the specifications of the bearings which were imported was also handed over. Though the bearings imported by the petitioners were Deep Groove Single Row Radial ball bearings, nevertheless the number of balls in the bearings were only seven as compared to eight in SKF No. 6203 and further the ball bearings which were imported by the petitioners were pre-greased and did not require any greasing during operation. The Deputy Collector of Customs by an order dated 8th July, 1970, however, came to the conclusion that the goods imported were a banned item and ordered of its confiscation but gave the petitioners an option of removing the goods on payment of Rs. 50.000/- as fine.

5. An appeal was preferred by the petitioners to the Appellate Collector of Customs, Calcutta but without success. A revision application was then filed to the Government of India. The petitioners also sought to produce further evidence before the Government of India in order to show that the ball bearings imported were different from those which had been banned. In this connection it was also averred by the petitioners that even the outer diameter of the ball bearings which had been imported was 37mm and not 40mm. By order dated 29th September, 1972, the Government of India rejected the application of the petitioners. The Government of India did not accept the sample of the ball bearings which had been produced by the petitioners and came to the conclusion that the sample which had been produced showed some tool marks on the outer diameters whereas the sample which had been forwarded by the Customs House showed that the outer dimensions were 40 mm and not 37 mm. The Government of India came to the conclusion that dimensionally the ball bearings imported by the petitioners were similar to SKF 6203 even though they had only seven steel balls as compared to eight in SKF 6203.

6. In this writ petition the challenge is to the aforesaid decisions of the Customs Authorities as well as the Union of India. It may, however, be observed here that the goods imported have been released by the Customs Authorities on the petitioners exercising its option and paying the fine of Rs. 50.000/-.

7. It was vehemently contended by the learned Counsel for the petitioner that the ball bearings imported by the petitioners were not identical to the ball bearings which had been banned and, therefore, the orders of the respondents were not correct. According to the learned Counsel, it was evident, and accepted by the respondents, that whereas the ball bearings imported by the petitioners had only seven steel balls in the bearing, the ball bearing of SKF 6203 had eight. The result of this was that the load bearing capacity of two types was different. Furthermore, whereas the ball bearings of SKF required greasing during operation, the ball bearings imported by the petitioners were pre-greased and did not require any such maintenance during operation.

8. In order to appreciate the contention of the petitioners what has to be interpreted is the relevant provisions of the import policy so as to determine as to what exactly was banned. The perusal of the entry, extracted above, shows that what was banned was Deep Groove Single Row Radial Ball Bearings having the dimensions indicated therein. It appears that each manufacturer has his own specifications of the ball bearings manufactured, and as different types of ball bearings are manufactured, different numbers are specified. The provisions of the import policy mention ball bearings of ISI specifications or of Hoffmann No. 117 or SKF No. 6203 bearing the dimensions mentioned therein. The heading of the appendix contains the word 'Banned Types of Ball Bearings'. The use of the word 'types' indicates that what is banned is the type of ball bearings specified in the appendix. The only property of the ball bearing which was specified in the appendix is the dimension and nothing else. Ball bearings may have different characterizations like load bearing capacity, the metal out of which it is manufactured, whether it requires the use of grease or oil. It is possible that different manufacturers may be manufacturing the ball bearings in different manners, but as per-----by the appendix-----the ball bearings have been categorised according to the dimensions. This dimensional categorisation is what is material in order to determine whether the ball bearings imported are permissible or not. Reading of the import policy shows that if the ball bearings imported are of a particular dimension then the import of the same is banned. In the present case the finding of fact arrived at by the authorities concerned is that the physical dimension of the ball bearings imported by the petitioners are the

same as indicated in respect of SKF 6203 and this being so, the conclusion of the authorities was right namely that the ball bearings imported by the petitioners were not permitted to be imported.

9. It was then contended by the learned Counsel for the petitioners that in the appendix what is specified are the ball bearings bearing specifications marks of either ISI No. 17BC02 or Hoffmann No. 117 or SKF No. 6203. What was imported by the petitioners did not bear any of these specifications marks. The learned Counsel submitted that it is the import of these ball bearings, specified in the import policy, which were banned and not ball bearings which may be having equivalent specification. In this connection, learned Counsel sought to rely on the import policy for the year 1970-71 where before the word Hoffmann and SKF, the word 'equivalent' has been inserted. To my mind the use of the word 'equivalent' in the import policy of the year 1970-71 can be of no assistance to the petitioners. The heading of the appendix shows that what is banned are Types of ball bearing. It is evident that there can be no import of ball bearings bearing 1S1 specification mark for it's only those ball bearings which were manufactured in India which will bear an 1S1 specification mark. The use of the word Type indicates that the ball bearings, whose import was not permissible were either those which had Hoffmann or SKF number or those types of ball bearings. In other words, ball bearings not bearing Hoffmann or SKF number but having similar dimensions could be regarded as 'type' of ball bearing which had been banned. What is material in order to find out the type of ball bearing is not the specification number but what is material to find out is whether, firstly, it was a Deep Groove Single Row Radial ball bearing and, secondly, it is of the dimension mentioned in the said appendix of the import policy. The use of the word 'equivalent' in the year 1970-71 was merely of clarificatory nature and the non use of the said word for the earlier years did not mean that similar or equivalent type of ball bearings were permitted to be imported. The matter may be examined from another angle. The import policy is concerned with the import of types of goods coming into the country. According to the import policy, ban was imposed on the import of Deep Groove Single Row Radial ball bearings of the dimension mentioned therein. It will be negating the intention of the import policy if it was to be construed as permitting the import of Deep Grove Single Row Radial ball bearings of the dimension

mentioned therein if it did not have ISI, Hoffmann or SKF number specified therein. What is banned is the goods of the particular specifications and types and to my mind it was immaterial as to who manufactures the said ball bearings. If the ball bearings which were manufactured did not have all the properties or other specifications identical to Hoffmann 117 or SKF 6203, nevertheless, the import of the same would be banned if, like Hoffmann number 117 or SKF number 6203, the ball bearings sought to be imported were Deep Groove Single Row Radial ball bearings having a bore of 17 mm, outside diameter of 40 mm and width of 12 mm. It is this type of ball bearing which was not permitted to be imported and the finding of fact in the present case is that what has been imported by the petitioners was Deep Groove Single Row Radial ball bearings bearing the aforesaid dimensions. I am, therefore, of the opinion that the decision of the respondents that the ball bearings imported by the petitioners were not permitted to be imported was according to the terms of the import policy. No other contention has been urged before me. For the aforesaid reasons the writ petition is dismissed with no orders as to costs.