

Sohanlal Vs. Additional Collector of Customs and anr.

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Court : Kolkata

Decided On : Aug-11-1961

Reported in : 1962CriLJ140

Judge : D.N. Sinha, J.

Appellant : Sohanlal

Respondent : Additional Collector of Customs and anr.

Judgement :

ORDER

D.N. Sinha, J.

1. The short facts of this case are as follows; The petitioner carries on business under the firm name of Achhruram Sohanlal. He is an exporter of various forms of lac, particularly, rei'usa lac. As is well known, lac is a resinous substance secreted, by certain insects which live in certain specified types of trees. It is mainly exported outside India. Being of an animal-cum-agricultural origin, it is found that in spite of refining in the manufacturing process, lac is found to contain, various impurities. For example, there is moisture, vegetable resin etc. Some of these are soluble in cold alcohol and others are not. It appears that there are various kinds of lac, one of which is called 'Molumma' which is a kind of refuse lac in which the petitioner has much export trade. The lac content of this variety is between 40 p.c. and 80 p.c. The export of lac from India is now controlled, that is to say, it has to

be effected under a licence.

2. In February, 1960 the petitioner entered into a contract for the sale of 1800 bags of Molumna refuse lac to West Germany. So far as till application is concerned, it relates to two consignments viz., one of 100 bags and the other of 250 bags. For these two consignments, two licenses were obtained from the port Control authorities, and these were to be exported to West Germany per S.S. Braunfels. These packages were sent to the Custom House, covered by two shipping bills. At this point of time, the goods were sampled and tested for determination of the lac content by Messrs. R. V. Briggs Co. Private Ltd., a well known and reputed company of testers and valuers. This sample was taken in the presence of the parties and a Customs Officer. It was found, as is evident from the certificate issued by them, that the lac content was 78.69 per cent. It appears that thereafter the Customs authorities caused a chemical examination of samples taken by them and according to them the lac content of the 100 bags was found to be 88.37 per cent, and that of the 250 bags was 81.64 per cent. Thereupon, two show cause notices were issued upon the petitioner, copies whereof are annexed to the petition marked as Ex. D. In the show-cause notice, issued by the Assistant Collector of Customs, it was pointed out that upon the chemical test the percentage of lac was found to be 88.37 per cent, and 81.64 per cent, respectively. Refuse lac or Molumna lac, it was claimed, cannot have a percentage of lac of over 80 per cent. It was therefore charged that the lac that was being exported was not under a proper license and the value should be much more than was declared. It was proposed therefore to impose a penalty under Section 167(37) of the Sea Customs Act. Also, action was proposed under Section 167(8) of the Sea Customs Act.

3. Upon receiving this notice, the petitioner showed cause. Copies of the explanations are annexed to the petition and marked with the letter E. It was pointed out in the explanation that the test made by Messrs. R.V. Briggs Co. Private Ltd. was by the 'indirect method,' whereas the test that was made by the Customs authorities was by the 'direct method,' This difference in the two methods has been clearly explained. It is pointed out that in the direct method, by dissolving lac in cold alcohol, the lac is not isolated from all other impurities,' e.g., moisture

etc. But in the indirect method, a determination is made of the contents of all matters other than lac, so that the percentage of lac that is found is more correct than the other method, and should form the method of assessment of the lac content. It was stated in the explanation that this contention has now been accepted by the Government Chemist, and in the affidavits before me it has been stated and not specifically denied that it is the indirect method which is now being followed by the Customs authorities in making assessment of lac content.

4. There is one other fact that I should mention here, namely that after the first test had been made, the Customs authorities themselves made a second test, whereby, in the case of the 100 bags, the percentage came down from 88.37 to 82.2, and in the case of the 250 bags it rose from 81.64 to 81.83. Upon these materials, the matter went for adjudication before the Assistant Collector of Customs, and he has passed an order in each case, being Ex. F to the petition. In the order Ex. F at p. 35 what is said is as follows:

Mr. H.S. Geschke, the representative of the shippers appeared for a personal hearing. He raised a number of points but did not press the objections against the correctness of the test by the Custom House Laboratory.

5. Of course, if Mr. Geschke had accepted the test of the Custom House Laboratory, that is an end of the matter. I have before me now an affidavit by Mr. Geschke, who has pointed out that he had made no such admission. What he admitted was that the result of the tests made by the Customs authorities by the direct method is one which he was not questioning. But what he was questioning was the correctness of the direct method itself. According to him, that method is not a correct method for the assessment of the lac content. Now, with regard to the question as to which is the better method the indirect or the direct method, that is a matter which I cannot determine. But the question that arises is as to whether the Assistant Collector of Customs, while considering the explanation of the petitioner, has considered this aspect. The point was specifically raised in the explanations to the show-cause notice. It was explained therein in great detail as to why the direct method was not likely to yield a correct result and why the indirect method should be followed and was a more accurate one. This objection

was supported by the certificate given by Messrs. R.V. Briggs Co. Private Ltd. who are a well known firm of experts in such cases. Having considered all the materials before me, I am unable to come to the conclusion that Mr. Gescheke had given up the most important defence to the show-cause notice, which could only result in the objections being overruled. It appears to me that Mr. Gescheke had merely conceded the correctness of the result of the chemical test by the direct method, and his admission went no further. On this point, therefore, the Assistant Collector of Customs fell into an error. It may be observed that 80 per cent, being the accepted percentage over which the lac contents cannot be permitted to go, the variations are not substantial but marginal. In one case it is 82.2 per cent, and in the other 81.83 per cent., even if we accept the chemical tests made by the Customs authorities. When, therefore, an exporter points out that the test that is being applied is an outmoded one and not one likely to give a correct result, the least he can expect is for the Customs authorities to consider this point and either accept it or reject it. It is true that the Customs authorities being the experts, their views will not be lightly interfered with by the Court. But at the same time, the Court will ensure that they take all the relevant facts into consideration and are not misguided or become a law unto themselves. In this particular case, the short point upon which this application should succeed is that the customs authorities failed to consider and arrive at a decision on the basic point in the defence as to whether the direct method which was actually followed was a proper method for assessing the lac content or whether the indirect method, which it is claimed gives a better result, should be followed, especially where the variation is marginal. I might mention here that at the hearing, the petitioner offered that even now a sample may be taken and tested by the latest method in the Government Test House, so that there should be no room for doubt. But this offer has not been accepted by the respondents.

6. In my opinion, it would be a failure of justice to hold that an exporter should be called upon to pay large sum like Rs. 17,000/- as fine although he has put forward the plea that the test that has been adopted is an ancient and obsolete method and productive of inaccurate results and this plea is not even considered. In that case, no one can ever export lac outside India, although it constitutes one of our prominent earners of foreign exchange. This Rule must therefore be made

absolute and the orders of the Assistant Collector of Customs mentioned above will be quashed by a writ in the nature of certiorari. This will mean that the Customs authorities will now consider the matter and decide it according to law. The interim orders are discharged. There will be no order as to costs.

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