

Laxmi Traders and anr. Vs. Assistant Collector of Customs and ors.

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Court : Kolkata

Decided On : Apr-03-1986

Reported in : 1986(25)ELT678(Cal)

Judge : Sudhir Ranjan Roy, J.

Acts : [Customs Act, 1962](#) - Sections 11, 111, 112 and 124; ;Import (Control) Order, 1955; ;Imports and Exports Control Act, 1947 - Section 3

Appeal No. : Matter No. 133 of 1982

Appellant : Laxmi Traders and anr.

Respondent : Assistant Collector of Customs and ors.

Advocate for Def. : Mitra, Adv.

Advocate for Pet/Ap. : Bajoria, Adv.

Judgement :

Sudhir Ranjan Roy, J.

1. The petitioner No. 1 is a partnership concern and the petitioner No. 2 is one of its partners.

2. As a transferee of the relevant import licence the petitioner no. 1 placed a firm order dated 23.6.1981 to a firm in Holland through the indenting agent for supply

of secondary grade stainless steel sheets valued at US Dollars 1600 per metric tonne. The description of the goods in the invoice was, however, given as 'stainless steel sheets 0.5 mm thick ...' without mentioning whether they were of prime or secondary grade.

3. The goods having arrived at Calcutta port on or about October 24, 1981 the petitioners filed the necessary bills of entry dated November 7, 1981.

4. However, on January 25, 1982 the Assistant Collector of Customs issued a notice to the petitioner no. 1 intimating that the correct value of the goods would be US Dollars 2200 per metric tonne c.i.f., Calcutta, being the value at which the MMTC imports prime quality stainless steel from different other countries and thus the petitioners having made mis-declaration, the goods were liable to confiscation under Section 11(b) and 111(m) of the [Customs Act, 1962](#).

5. According to the petitioners the Customs authorities were working with a prejudiced mind and were bent upon declaring the goods to be of prime quality though the supplier had nowhere declared it to be so.

6. On the assumption that the goods were of prime quality the respondents declined to release the same without payment of duty at higher rate, consequent to which the petitioners obtained the instant rule by invoking the writ jurisdiction of the court. The main prayer of the petitioners is for issuing a writ in the nature of mandamus directing the respondents to withdraw, recall, cancel and rescind the purported show cause notice dated January 25, 1982. Under this court's order the petitioners had the goods released on payment of duty on the invoice value of the goods and furnishing bank guarantee for the balance.

7. The respondents in their affidavit-in-opposition besides challenging the maintainability of the writ petition and the jurisdiction of this court to stall the departmental proceedings at the threshold, have alleged that the goods on physical examination in the docks by the Customs officials, were found to be stainless steel sheets of prime quality valued at US Dollars 2200 per metric tonne to the best of judgment and not of secondary quality valued at US Dollars 1600 per metric tonne. Consequently, the petitioners were liable to pay customs duty at

higher rate as claimed by the respondents.

8. Appearing on behalf of the petitioners, it was contended by Mr. Bajoria, the learned Advocate that the show cause notice (Annexure-IX) is bad in law since it was issued without application of mind. According to Mr. Bajoria the notice instead of being specific regarding the real point at issue is absolutely vague and keeps the petitioners in total darkness about the objection which they would be required to meet in the adjudication proceedings. In this connection my attention was drawn to Section 124 of the [Customs Act, 1962](#) which provides that no order confiscating any goods or imposing any penalty shall be made unless the owner of the goods or the person concerned is given a notice in writing informing him all the grounds on which it is proposed to confiscate the goods or to impose a penalty.

9. It was contended by Mr. Bajoria that since the impugned show cause notice does not fulfil the aforesaid statutory requirements, it is liable to be struck down. To allow the departmental adjudication proceedings to continue on the basis of the said show cause notice would, according to Mr. Bajoria be highly prejudicial to the interest of his clients since the notice does not give them the requisite indication about the real nature of the objection they would be required to meet.

10. Now, since the whole dispute centres round the validity or otherwise of the show cause notice (Annexure-IX). It is quoted below for proper appreciation of its implications :

'F.No. S.33-2/88A.Gr.III

S.213-P-82/81A Gr.III

Registered with A/D

Dated : 25.1.82.

From:

The Asstt. Collector of Customs,

for Appraisement Group III,

Custom House, Calcutta.

To

M/s. Laxmi Traders,

3796, Chawri Bazar,

Delhi.

SHOW CAUSE NOTICE

Sir,

Subject : 1) 20 cases prime quality stainless steel sheets 29733 M. Ton S.S. Ursus, Rot No. 588/81, Line No.. 24 a/c. M/s. Laxmi Traders (H/C B/E) valued Rs. 4,38,459.00 C.I.F.

2) 21 cases prime quality stainless steel sheets 30.060 M/Ton. ex. S.S. Ursus, Rot No. 588/81, Line No. 24/a/c. M/s. Laxmi Traders (W/H B/E) value Rs. 4,43,281.11 C.I.F.

You have imported the above mentioned goods from Holland and filed one Home consumption B/E and one W.R. B/E for clearance of the same and the value was declared US Dollars 1600.00 per M/Ton GIF.

It is, however, seen that value, of the similar prime quality stainless steel imported from different other countries by MMTC are valued at approx. US Dollars 2200.00 per M/Ton and more. Hence the value declared by the party US Dollars 1600.00 cannot be accepted as correct. The correct value to the best of judgment should be US Dollars 2200.00 per M/Ton GIF.

On the basis of the CIF price at Rs. 220/- the total CIF price for both the consignments works out to be Rs. 12,12,222.63 and the assessable value works out to be Rs. 18,24,516.66. It, therefore, appears that the value of the two consignments have been misdeclared to the extent of Rs. 3,33,259.16. Had not this been detected, there would have been loss of duty to the tune of Rs.

7,51,408.11 P. The goods are, therefore, liable to confiscation under Section 111(m) of [Customs Act, 1962](#).

Moreover, the total balance available in the licences produced by you is Rs. 8,36,652/-.

Whereas the total CIF value of both the consignments is Rs. 12,12,323/-. Hence the goods valued -at Rs. 3,25,671/- is not covered by the licence. The party could not also produce any other valid licence. Hence the goods valued at Rs. 3,25,671/- appears to have been imported without any valid import licence. Therefore the importation of the goods valued at Rs. 3,25,671/- is unauthorised under Section 11 of the [Customs Act, 1962](#) warranting action under Section 111(d) of [Customs Act, 1962](#).

In view of the aforesaid, it appears that goods valued at Rs. 12,12,322.63 have been imported in contravention of clause 3(1) of Import (Control) Order 1955, as amended read with Section 3 of the Imports & Exports Control Act, 1947, as amended. You are accordingly called upon to show cause in writing to the Collector of Customs within 15 days from the date of issue of this notice as to why the contravening goods should not be confiscated under Section 111(d) and 111(m) of the [Customs Act, 1962](#) and why a penalty should not be imposed on you under Section 112 of the [Customs Act, 1962](#). All evidence in support of your explanation should be furnished along with your written representation. If you wish to be heard in the matter you may indicate so in your written representation.

sd/- K.M. Mondal, 22.1.82.

Asstt. Collector of Customs

for Appraisement Group III.'

11. It was contended on behalf of the petitioners that a reading of the notice simply shows that the petitioners had merely undervalued the goods, viz., 'Prime quality stainless steel sheets' which they had allegedly imported. There is nothing in the notice to indicate that there was any misdeclaration by the petitioners as to the nature of the goods which were sought to be confiscated under Section 111(d) and

111(m) of the Customs Act.

12. Now, Section 111 of the act gives a list of the goods brought from a place outside India which are liable to confiscation. Clause (d) of the Section relates to the goods imported or attempted to be imported contrary to any provision imposed by or under the Customs Act or any other law for the time being in force and clause (m) relates to goods which do not correspond in respect of value or in any other particulars with the entry made under the Customs Act.

13. Coming to clause (d) of Section 111 it need not be mentioned that goods imported in violation of the conditions of the licence become liable to confiscation under the said section.

14. Clause (m) of Section 111 is attracted when the goods do not correspond in value or in respect of other particulars with the declaration made in the bill of entry.

15. In this connection Mr. Mitra, the learned Counsel representing the respondents, contended that if not for anything else mentioned, of Section 111(d) and 111(m) taken along with the other particulars in the notice, should be deemed to have given sufficient indication to the petitioners about the nature of the objection which they would be required to meet.

16. Incidentally, the licence in question was valid for import of 'all seconds/secondaries of all grade of alloy steel (including stainless steel...) in coated/uncoated condition' (vide paragraph 6 of the writ petition). And according to the petitioners, they had in fact imported consignments of stainless steel sheets which are duly covered by the licence.

17. In the impugned show cause notice, however, it has been clearly mentioned that what the petitioners had actually imported was prime quality stainless steel sheets and, in my view, this must have given sufficient indication to the petitioners,) what the Customs authorities were out to establish.

18. It is, however, needless to mention that the notice should have been more specific and it would have been undoubtedly desirable for the customs authorities to mention in the notice that the goods imported, though said to be secondary

grade stainless steel sheets, were found on physical examination by the Custom officials to be of prime quality. But, nevertheless, the fact remains that the notice carried its complete message to the petitioners, the importers, whatever a layman's interpretation of the same may be. This is more than clear from the different averments made by the petitioners in the writ petition.

19. So far as the valuation is concerned, there is no dispute that sheets of prime quality have a much higher value than similar sheets of secondary grade, though there may be some dispute regarding the real value of the sheets of the prime quality. The notice is clear on the point that prime quality sheets allegedly imported by the petitioners, are valued at US \$ 2200 per metric ton. Since there is prima facie no dispute regarding the value of secondary grade sheets which according to the petitioners they have actually imported, the petitioners may very well satisfy the Customs authorities in response to the notice that what they actually imported were sheets of secondary grade and not of prime quality whatever be their value.

20. So far as the other aspect of the matter is concerned, the petitioners have stated specifically in paragraph 9 of the writ petition that the Customs authorities were working with a prejudiced mind and we were bent upon declaring the goods to be of prime quality.

21. It is thus more than clear that the impugned show-cause notice inspite of its apparent vagueness, conveyed its true message to the petitioners and since they have clearly understood the nature of the objection sought to be raised by the Customs authorities, they in all fairness should have responded to the show cause notice without unnecessarily rushing to this Court keeping thereby the proceedings hanging at the threshold for these long 4 years. This undoubtedly, is an abuse of the legal process to which I should say that the respondents have also contributed to some extent due to their carelessness in the matter of drawing up the impugned show cause notice.