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Court : Kolkata

Decided On : Apr-02-1986

Reported in : 1988(16)ECC193,1988(17)LC772(Calcutta),1987(30)ELT703(Cal)

Judge : Padma Khastgir, J.

Acts : Customs Act, 1962 - Sections 11, 49 and 111; ;Customs Tariff Act, 1975; ;Central Excise Tariff Act; ;Trade and Merchandise Act, 1958 - Section 77

Appeal No. : Suit No. 336 of 1986

Appellant : Pradip Traders

Respondent : Collector of Customs

Advocate for Pet/Ap. : Gautam Mitter, Adv.

Disposition : Petition rejected

Judgement :

Padma Khastgir, J.

1. The petitioners being aggrieved Dy non-release of Angel brand catheters by the Customs Authorities has moved the writ jurisdiction of this Court for issuance of necessary rule and interim order directing the respondent authorities forthwith to release the said goods.

2. Mr. Gautam Mitter, the learned-lawyer on behalf of the petitioners, submitted that the goods so imported by Pradip Traders are not subject to payment of any duty as those goods not only could be imported under Open General Licence but also the particular item, that is, the Angel brand catheters are not subject to payment of any duty. It was further the case of the petitioners that the bill of entry had been submitted by the petitioners with the Customs Authorities in the month of June, 1985. Till 27th March, 1985 apart from refusing to release the said goods, the Customs authorities had not taken any steps whatsoever nor initiated any proceedings against the petitioners for violation of any of the provisions of the Customs law. Mr. Mitter craved reference to the General Exemption No. 11/90 under Item 32 thereof, suction catheters are exempted from payment of any duties. Mr. Mitter further contended that although the bill of entry had been submitted by his client and the entire document is a typed one, in the column for 'description of goods' it is written in hand in the manuscript from 'suction catheters' which had not been done by the petitioner themselves and, according to the petitioners, it had been done by the respondent authorities with an ulterior motive of bringing action against the petitioners for giving such wrong description of the properties. Mr. Mitter submitted that the goods which have, been imported by the petitioners fall under Appendix 10, List 2, Item No. 38 where it has been provided that any apparatus or items used for male or female urinary incontinence, which are described as male or female urinary incontinence sets, which are exempted from payment of any duty. Under the circumstances the catheters which have been imported by the petitioners fall within that particular item. As a result no duty is payable by the petitioners. It was also the case of Mr. Mitter that to help the importers who had almost a monopoly business in Delhi, the Customs authorities have deliberately not released the goods with the view instead of helping such monopoly trader in Delhi inasmuch as, Mr. Mitter contended, no licencei is required for the purpose of importation of those goods and inasmuch as they are life saving devices and are duty-free items, the Customs authorities should be directed forthwith to release the said goods in favour of the petitioners.

3. Before the District Judge's Court at Delhi M/s. I.D. Gupta and Sons, proprietors of M/s. Medirnex India had filed a suit against various parties including M/s. Pradip Traders for various reliefs including a prayer for order of permanent injunction

restraining the defendants, including Pradip Traders, from infringing the artistic features of 'Angel' and also for an order of permanent injunction restraining the defendants, including Pradip Traders, in any way from printing, publishing or infringing copyright in respect of the said product. There it had been stated that the plaintiff in the said suit had been exporting from Japan medical and surgical apparatus and instruments including Foley Baloon Catheters in India since the year 1968 and those items were being regularly sold by the plaintiff therein in India, the plaintiff claimed to have made exclusive sales of such catheters under the said trade mark Angel by giving full particulars of such sales for the years 1980 to 1984 which went to the tune of Rs. 65 lakhs. The said catheters being life saving devices are very sensitive items and if used negligently they can cause the death of patient. In the said suit the plaintiff therein claimed to be the owners and proprietors of the trade mark 'Angel'. There it was contended that some unscrupulous manufacturers and traders started manufacturing and selling and also marking medical surgical apparatus, including Foley baloon catheters from unscrupulous manufacturers under the trade mark 'Angel. Inasmuch as the brand imported by the defendants with the name 'Angel', it was the case of the petitioners, the trade mark adopted and used by the defendants was not only visually but phonetically and structurally identical to the trade mark 'Angel. Under those circumstances the suit was filed before the the Delhi' Court and on an application for interim injunction and an order had been passed by the learned Judge in favour of the plaintiff. Thereafter the petitioner herein moved the Delhi Court for variation of the interim order and an order was passed by the learned Judge to this effect that the defendent No. 6 therein, that is, the Union of India may 'release the goods to the defendant No. 2' that is, Pradip Traders but an order of injunction had been passed against the petitioners, herein, Pradip Traders to the effect that even after getting the goods so released from the defendant No. 6, the said Pradip Traders shall not market it and/or dispose of or sell the goods so released.

4. Mr. Mitter further craved reference to various Other documents in respect of other parties, namely, bill of entry given in the name of V.K. International and submitted that for the same 'Angel' brand of catheters the goods have been imported by the said party and the Customs authorities have released the said

goods to the importer concerned. Under the circurristances there could be no ground for the Customs authorities in not releasing the said goods in favour of the petitioners. Mr. Mitter further contended that the officer concerned, Mr. Singh, had kept the file with him, without disposing of the same in proper time, even when he was away on holidays at his home town. Under the circumstances Mr. Mitter commented that the respondent authorities were bent upon without any reason whatsoever not to releasing the goods inasmuch as they were in favour of helping the Delhi party who almost had established a monopoly business so far the importation of catheters is concerned. Although the petitioners have contended that they had nothing to do with the writing 'suction catheter' in the column for Description of Goods in the bill of entry and that had been written by the Customs authorities to put the petitioners in difficulties and thereby get a handle to take necessary action against the petitioners, from the same document it appeared that the petitioners themselves had given all the particulars such as, name of the vessel, quantity of goods, description of goods, the heading of exemption of customs tariff and such particulars as required to be given in the bill of entry and at the left hand bottom side it had similarly been typed by the petitioners themselves the endorsement - OGL Appendix 6, Serial No. 32 of List 2 of Import Export Policy of 1985 to 1988. Under Serial No. 32 of OGL, Appendix 6 suction catheters have been mentioned. Under the circumstances the petitioners themselves had given the description in the bill of entry of the nature of the goods imported by them. Therefore, it was the view of the Customs authorities that the petitioners were guilty of suppression of material facts and they have deliberately given the Wong description of the goods to avoid payment of duty on the goods so imported. Further, the Customs authorities were of the view that inasmuch as the description of goods have been given in the said bill of entry misleading the Customs authorities, they were entitled to confiscate the goods apart from imposing the duty and/or penalty in respect of importation of the said goods. The learned lawyer on behalf of the Customs authorities submitted that under Item No,, 90.17/18 the goods imported by the petitioners fall under the heading Medical and Surgical Instruments importation whereof enables the Customs authorities to impose 60% duty on the said goods. According to the Customs authorities, the description was chosen by the petitioner deliberately with a view to avoid such liability. Under

Section 111 of the Customs Act the respondent authorities are entitled to confiscate the goods which are imported or attempted to be imported or brought within the Indian Customs water for the purpose of being imported contrary to any prohibition imposed under the Act or any other law for the time being in force and also in the event under Sub-clause (m) if any goods which do not correspond ... in respect of the value or any other particular with the entry made, hence the respondent authorities contended that the goods so imported were liable to be confiscated. Mr. Mitter's submission that the goods so imported by the petitioners fall under Appendix 10, List II, Item 38 inasmuch as the goods so imported were apparatus used for male or female urinary incontinences but the bill of entry submitted by the petitioner do not give such description. That case was made out for the first time from the Bar.

5. So far the other party, whose bill of entry was referred to by Mr. Mitter it indicated that 40% duty has been imposed and paid by the party and thereafter the goods have been released. Moreover, those cathetors were foley baloon and not suction catheter.

6. It was contended on behalf of the Customs authorities that although the goods imported were foley baloon catheter which is functionally and constructionally different from the suction catheter, the petitioners gave a wrong description in the bill of entry dated 14th of 3une, 1985. Hence, the goods imported by the petitioners are not entitled to be released duty free. They are assessable under the Heading 90.17/18 of the Customs Tariff Act, 1975 and notification dated 7th of October, 1977 under the Heading 68 of Central Excise Tariff Act at the rate of 40% + 2.5% Auxiliary and Countervailing duty at the rate of 12%. The entries made on the reverse of the bill of entry indicated that the goods were foley baloon catheter. The petitioner's attempt to get benefit by giving misdescription of the goods, so imported as Suction Catheter. The respondents contended that on 17th of October, 1985 for the first time the petitioner approached the Customs authorities for allowing warehousing the said goods under Section 49 of the Customs Act. Inasmuch as there had been allegation made by the petitioner that the Appraiser Shri R.P. Singh, deliberately withheld the papers and in fact carried the said papers with him to his native place which he was entitled to do. There is no

affidavit by the said appraiser denying such allegation. Under the circumstances, such conduct is reprehensible. But the Customs authorities submitted that the petitioner as indicated earlier that the petitioner although had filed the Bill of Entry in the month of June but they had approached the Customs authorities only in October, 1985 for warehousing the same. It was the case of the Customs authorities that the Bill of Entry was taken back by the party concerned as a result no steps could be taken. Moreover the petitioners choose not to make any complaint to the higher authorities in respect, of the conduct of the said appraiser apart from that it was further contended on behalf of the respondents that the foreign supplier fall within the mischief of Section 77 of the Trade and Merchandise Act, 1958. Even under Section 11 of the Customs Act, the Central Government if satisfied, may, in the facts and circumstances by notification prohibit either absolutely or subject to fulfilling the terms and conditions, may restrict import and export of goods for the purpose of protection of patents trade marks and copyrights. By notification dated I8th of January, 1964, the Central Government had prohibited the import of goods having a false trade mark within the meaning of Section 77 of Trade and Merchandise Act, 1958. The petitioners failed and neglected to produce any catalogue or literature in respect of the said goods. Inspite of that the parties concerned was given the facility of warehousing the goods when they produced their bill of entry after final examination on 3rd October, 1985. At the time of moving the application, the petitioner suppressed the material facts, including the order of injunction passed by the Learned District Judge, Delhi. The petition was affirmed on 10th of January, 1986 but it was moved only in the month of March, 1986. Hence, there cannot be any urgency in passing an order in favour of the petitioner.

7. Under the circumstances, this Court does not find any materials for interference under its writ jurisdiction. The petitioner is entitled to avail the alternative remedy provided for in the Act itself, if aggrieved by any decision of the respondent authorities. Under the circumstances this petition is rejected.