

Crystal Impex Pvt. Ltd. Vs. Collr. of Cus. (Preventive)

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Court : Kolkata

Decided On : May-14-1992

Reported in : 1994(70)ELT198(Cal)

Judge : Suhas Chandra Sen, J.

Acts : [Customs Act, 1962](#) - Section 47

Appeal No. : Matter No. ... of 1992

Appellant : Crystal Impex Pvt. Ltd.

Respondent : Collr. of Cus. (Preventive)

Advocate for Def. : Shiba Das Banerjee and ;Promtosh Mukherjee, Adv.

Advocate for Pet/Ap. : S.K. Kapur, Sr. Adv. and Dipak Deb, Adv.

Judgement :

Suhas Chandra Sen, J.

1. The petitioner imported mini handy scanner from Taiwan and submitted the Bill of Entry in respect thereof for clearance of the goods at Calcutta. The goods were released by Calcutta Customs to the petitioner's clearing agents. The petitioner claims that it had a valid licence to import the goods.

2. The case of the Customs Department as stated in the affidavit-in-opposition of Ranjan Kumar Sahoo, Respondent No. 3, affirmed on 4th October, 1991 is:

'The evidence on record in possession of the answering respondents herein would demonstrate that while importing the mini handy scanner and submitting the Bill of Entry therefor the petitioners herein failed to disclose all the relevant particulars relating to importation of the consignment, and also mis-declared the value thereof. Furthermore, import licence does not cover the restricted item like loaded P.C.B. and as such the Customs Authorities have initiated an investigation in the matter by obtaining the goods as mentioned in Annexure 'E' to the writ application.

If the allegations are found to be correct on investigation the petitioner had no right to import the goods without a valid licence and the said goods are liable to confiscation. In such circumstances the petitioners herein are estopped to say that because of the order under Section 47 of the Customs Act steps cannot be taken against the petitioners under the provisions of the [Customs Act, 1962](#).'

3. It has been further stated that all the questions will have to be adjudicated by the Competent Authority under the provisions of the Customs Act, 1962.

4. It has been further stated in the aforesaid affidavit that the bill of entry dated 27-8-1991 lodged on behalf of the petitioner mentions 'mini handy scanner as per invoice attached (computer peripherals)'. The petitioner's imported licence did not cover, the importation of restricted item like loaded P.C.B. These items could be imported only under specific licences. In the Bill of Entry, costly software materials, imported by the petitioner were also not mentioned. The quoted price in the invoice was in respect of mini handy scanner only and was not inclusive of other materials, some of which were manufactured by Z-Soft Corporation of U.S.A. The Customs Duty was originally calculated on the basis of declaration made by the petitioner. But on coming to know the further facts it was decided to detain the goods. It has been stated that the Customs Authority at Bombay have detained some of the goods, at the instance of the Calcutta Customs Authority. On behalf of the petitioner it has been contended that the Customs Officers at Bombay could not detain the goods after clearance of the goods by the Customs Authority at Calcutta. In my view this approach of the petitioner is entirely erroneous. Customs Officers

at Calcutta and Bombay are officers of the same department. If any detention of goods has to be done at Bombay for the purpose of any investigation in Calcutta then I fail to see why the Customs Officers of Bombay cannot do so in exercise of their statutory authority under the Customs Act.

5. Moreover, serious allegations have been made that the petitioner has induced the Customs Officer to release the goods on false representation or suppression of facts. I do not see why remedial steps cannot be taken according to law.

6. Mr. Mullick appearing on behalf of the petitioner has contended that after the goods have been cleared it is not open to the Customs Department to seize the cleared goods. Moreover, in this case the officer who has cleared the goods has not decided to detain the goods. When the goods were cleared by one officer, another officer cannot detain the said goods. Strong reliance in this connection was placed on a judgment of Delhi High Court in the case of Jain Shudh Vanaspati Ltd. and Ors. v. Union of India and Ors. - : 1982(10)ELT43(Del) which was followed by the Bombay High Court in the case of Union of India and Others v. Popular Dyechem - : 1987(28)ELT63(Bom) . Reliance was also placed on a judgment of the Calcutta High Court in the case of Sharad Himatlal Daftary v. Collector of Customs - : 1988(36)ELT468(Cal) .

7. The principles laid down in all these cases were in the context of the facts of those cases. No general principle can be made applicable to every case. In fact, in the case of Jain Shudh Vanaspati it was observed:

'Considering Section 47 of the Customs Act in the light of the legislative history, we are clear that the section attaches finality to the satisfaction of the officer that the goods are not prohibited. The finality cannot be disturbed unless the Department successfully shows that there was fraud or deliberate suppression.'

In the instant case the allegation of the Customs Department is that the petitioner has committed fraud and has suppressed the material facts. It has been stated in the affidavit filed by the Assistant Collector of Customs (Preventive) that the import licence of the petitioner does not permit him to bring in the restricted items like loaded P.C.B., which was restricted under Appendix-2B of Serial No. 160 of the

Import Export Policy of the 1990-93. Furthermore, it has been alleged that other costly softwares were not disclosed at the time of importation. There is also allegation about distortion of the import price.

8. In view of the aforesaid the respondents have been able to make out a prima facie case which calls for an answer. Therefore, the writ petition fails and is dismissed. All the questions of facts and laws are left open to be agitated before the Adjudicating Authority.

9. Reply to the show cause notice must be sent to the authorities within 3 weeks time from date. The Adjudicating Authority shall dispose of the case in accordance with law after giving a personal hearing to the writ petitioner.

10. There will be no order as to costs.

11. All parties shall act on a signed copy of the minutes of the operative part of this order on the usual undertaking.

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