

Northern Plastic Ltd. Etc vs Collector Of Customs And Central Excise ... on 14 July, 1998

Equivalent citations: AIR 1998 SUPREME COURT 2371, 1998 (6) SCC 443, 1998 AIR SCW 2355, 1999 (2) SRJ 398, (1998) 3 SCR 611 (SC), (1998) 4 JT 565 (SC), 1998 (3) SCR 611, 1998 (4) SCALE 105, 1998 (5) ADSC 261, (1998) 101 ELT 549, (1998) 77 ECR 666, (1999) 1 GUJ LR 687, (1998) 5 SUPREME 447, (1998) 4 SCALE 105

Bench: S.C. Agrawal, G.T. Nanavati

CASE NO.:

Appeal (civil) 4196 of 1989

PETITIONER:

NORTHERN PLASTIC LTD. ETC.

RESPONDENT:

COLLECTOR OF CUSTOMS AND CENTRAL EXCISE ETC.

DATE OF JUDGMENT: 14/07/1998

BENCH:

S.C. AGRAWAL & G.T. NANAVATI

JUDGMENT:

JUDGMENT 1998 (3) SCR 611 The Judgment of the Court was delivered by NANAVATI, J. The appellant in both these appeals is Northern Plastics Limited. Civil Appeal No. 4196 of 1989 is filed against the order of remand dated 14.8.89 passed by the Customs, Excise and Gold (Control) Appellate Tribunal (hereinafter referred to as the 'CEGAT') in Customs Appeal No. 2092/89-C. Civil Appeal No. 3325 of 1990 is filed against the order dated 20.4.90 passed by the CEGAT in Customs Appeal No. 2720/89-C, which appeal was against the order of the Collector passed after the remand.

In January 1989 the appellant imported 59 jumbo rolls of Photographic Colour Films (Unexposed) Positive. On or about 11.1.89 it produced before the Deputy Collector of Customs, Kandla Port the documents required for clearance of the said goods wherein the goods were described as "Cinematographic Colour Films (Unexposed) Positive" falling under Customs Tariff Heading 3702.4] and the Central Excise Tariff Item 3702.20 and entitled to exemption of customs duty under Notification No. 52/86 read with Notification No. 157./ 88-Customs and of countervailing duty under Notification No.50/88-C.Ex. Clearance of the goods was sought under OGL, the imported goods being Item No. 186 (1) of Part I of List 8 of Appendix 6 of AM 85-88.

On examination at Kandla Customs House they were found to be "Colour films- jumbo rolls" and, therefore, not entitled to the benefit of exemptions under the said notifications. Therefore, the

Collector of Customs, Rajkot initiated proceedings for confiscation under Section 111 (m) of the Customs Act, 1962 and imposition of penalty. The appellant waived show cause notice and requested for a personal hearing. The appellant was charged for misdeclaring the goods as "Cinematographic Colour Films (Unexposed) Positive", with a view to evade Government revenue to the tune of Rs. 51,89,698. The appellant was told that the misdeclaration consisted of wrong description of the goods, in the Bill of Entry and was for the purpose of availing of exemptions in payment of customs duty and countervailing duty. The appellant was also told that it was having SSI Certificate for only cutting/ conversion of jumbo rolls, and as it was not a manufacturing activity it could not be considered as 'actual user (industrial)'. On this basis it was charged that it had imported the goods illegally. The third point which was raised by the Collector was with respect to eligibility of the goods for exemption in the rates of duty as claimed in the Bill of Entry.

On completion of the enquiry as regards misdeclaration of goods, the Collector held that the appellant had given a specific description of the product including its length and width and had also shown at the bottom of Bill of Entry that the product was covered by OGL Appendix 6, List 8, Part I of Import Policy A.M.85-88 being raw material. He therefore, held that though the imported item could not be straightaway put on a projector or a camera, nonetheless, it was 'Cinematographic Colour Film (Unexposed) Positive' imported for slitting and perforating and converting it into Cinematographic Colour Films (Unexposed) ready for use on a projector. The Collector also held that the appellant was eligible to import the said goods as actual user (industrial) in terms of Entry No. 297 of Part I of List 8 of Appendix 6 of the Import-Export Policy for the year 1988-91. He accepted the appellant's case that slitting, cutting and perforating, is a manufacturing process and it did have SSI registration certificate issued by the District Industrial Centre, Ghaziabad for "Cinematographic Colour Films (Unexposed) Positive. As ready for production for conversion/cutting of jumbo rolls". The Collector also relied upon the fact that in 1987 the appellant was permitted by the Delhi Customs House to clear an identical consignment under OGL.

Accordingly he held that it was not a case of misdeclaration of goods either in respect of classification under the Customs Tariff or for showing eligibility to import under OGL.

As regards entitlement to the exemptions claimed, he held that as there were two sets of exemption notifications, one for the Cinematographic Films (Unexposed) and the other for the Jumbo Films (Unexposed) that clearly indicated that the Notifications regarding Cinematographic Films were not applicable to Jumbo Films and, therefore, the appellant was not entitled to the benefit of exemption Notifications Nos.52/86-Cus. dated 17.2.86 and 50/88-C.E. dated 1.3.88. The Collector did not examine whether the appellant was entitled to any other exemption as that was a matter of assessment of duty and not a subject-matter of the proceedings initiated by him.

, The Central Board of Excise and Customs found the order passed by the Collector as not legal and proper and, therefore, in exercise of its powers under Section 129D(1) of the Customs Act, directed the Collector to apply to CEGAT for determination of the points specified by the Board in its order. As directed, the Collector made such an application to CEGAT and it was heard as an appeal against the order of the Collector. It may be stated that before the Board the appellant had produced SSI Registration Certificate dated 24.8.85 issued by the Director of Industries, Gaziabad and the Central

Excise L-4 Licence dated 23.12.86.

The CEGAT agreeing with the finding of the Collector that the appellant had imported jumbo rolls of Photographic Films and not Cinematographic Films held that for claiming exemptions under the aforesaid notifications it had misdeclared the goods. It further held that the appellant was not an actual user (industrial) as it did not have an industrial licence issued under the Industries (Development and Regulation) Act, 1951, necessary for claiming the benefit of OGL and, therefore, the goods were imported without a valid import licence. After recording these findings CEGAT observed that all these relevant aspects were not taken into consideration by the Collector while passing the order and, therefore, it remanded the case to the Collector with a direction to re-adjudicate the matter keeping in mind what was said in its order.

The Collector, accordingly, issued a show cause notice dated 30.8.89 charging the appellant with misdeclaration of goods in order to avail of the exemption benefits and evade payment of customs duty to the tune of Rs. 81,80,698. The basis of the notice was an allegation that the import was unauthorized as the appellants did not have an industrial licence issued under the Industries (Development and Regulation) Act, 1951 and thus it was not an actual user (industrial) entitled to import the said goods under OGL. It was also alleged that the goods imported by the appellant were "jumbo rolls" and not 'Cinematographic Colour Films (Unexposed) Positive' and that the said misdeclaration was made with an intention to wrongly avail of concessional rates of duty even though the goods imported were not entitled to such concessional rates of duty. The basis of this charge was that the goods were not ready for use on a projector or a camera and were required to undergo the process of slitting/cutting and perforation along the length of the film and, therefore, could not be considered as Cinematographic Colour Films. On the basis of these allegations the appellant was called upon to show cause why the imported goods be not confiscated under the provision of Section 111 (d) and 111 (m) of the Customs Act, 1962 and why personal penalty should not be levied under Section 112(a)(i) of the Customs Act. The Collector possibly was inclined to agree with the submissions of the appellant, but held that in view of the finding recorded by CEGAT that "in so far as the identity of the goods is concerned, it is quite clear that what has been imported are jumbo rolls and not cinematographic colour films....." he had no option but to hold that the act of describing the imported goods as "Cinematographic Films"

amounted to misdeclaration. The Collector also held that in view of the finding recorded by CEGAT that the appellant did not possess a valid industrial licence under the IDR Act and was thus not an actual user (industrial), he was required to hold that the appellant was not eligible to import the said goods under OGL. In view of the findings recorded by CEGAT, the Collector had no other option and he also expressed his helplessness by observing that "these findings and conclusions of Hon'ble CEGAT forecloses any arguments pleas of the importer against requirement of an industrial licence under IDR Act and hence the charge of unauthorized importation in the absence of such a licence." He then held that the charges of misdeclaration and unauthorized importation were established, rendering the goods liable to confiscation under Sections 111(d) and 111(m) of the Customs Act and rendering the appellant liable to penalty under Section 111 (a) of the Customs Act. He ordered

confiscation of the 59 rolls, imposed a redemption fine of Rs. 5 lacs and also imposed a personal penalty of Rs. 10 lacs on the appellant.

The appellant feeling aggrieved by the order of the Collector appealed to CEGAT. It was not permitted to challenge the findings regarding misdeclaration and illegality of import as the bench hearing the appeal was of the view that it being a bench of coordinate jurisdiction could not sit in appeal over the findings recorded by the earlier bench. Even though on the earlier occasion, the matter was remanded to the Collector for re- adjudication, all the questions were considered by CEGAT in detail and findings were recorded categorically. On the question of entitlement to the benefits of the said exemption notifications CEGAT held that as the appellant had not filed any appeal against that part of the order of the Collector whereby its claim for exemption was denied and the writ petition filed before the Gujarat High Court was withdrawn, it was not open to the appellant to agitate that question again, particularly when such" an issue did not arise out of the Collector's second order passed after remand. The appellant's contention that Additional licences acquired by it covered the import was rejected by CEGAT on the ground that only unattested photo copies of the additional licences were produced and moreover the question of acceptance or otherwise of additional licences could have arisen only if the appellant was held actual user (industrial).