

Customs, Excise and Gold Tribunal - Mumbai

Puja Enterprises vs Commissioner Of Customs on 12 March, 2003

Equivalent citations: 2003 (155) ELT 377 Tri Mumbai

Bench: S T Gowri

ORDER Gowri Shankar, Member (T)

1. Puja Enterprises, the appellant before me, imported ribo-flavin vitamin B2 (feed grade). The import of the goods being restricted, required a licence. The licence that the appellant produced before the clearance was not accepted by the Commissioner who in his order of adjudication held the import to be unauthorised and ordered confiscation. Disposing of an appeal against the order, the Tribunal, by its order passed on 6-10-2000, considered the submission of the importer that the import licence was in fact available but could not be readily produced as it was in the Special Investigation Branch of the Custom House. It remanded the matter to the Commissioner to consider these aspects. At the hearing before the Commissioner which was held to give effect to the Tribunal's order, the representative of the appellant contended that two advance licences issued to Betul Oil & Flour Mills Ltd., Pune, which had been transferred by it to Veekay Products Pvt. Ltd., had been transferred to it by the latter and that these licences covered importation of the goods. The Commissioner did not accept these submissions. He said that the licences were subject matter of investigation by the Custom House and have been seized from Betul Oil & Flour Mills Ltd., "since the licences have been seized by the Custom authorities from the original licence itself and not from the present importers, hence, they cannot have any claim on those licences with the Custom authorities. He, therefore, concluded that the goods were still uncovered by any licence and ordered confiscation of the goods with an option to redeem them. He has also imposed a penalty on the appellant.

2. Counsel for the appellant contends that the licences in question were among those issued to Betul Oil & Flour Mills Ltd. and sold to Veekay Products Pvt. Ltd. These licences were, in turn, transferred in part to Puja Enterprises after receiving full consideration. The licences had validly been transferred to the appellant. The exchange control copies of the licences have been and continued to be in its possession. The licences have been tendered to another branch of the Custom House in which the appellant filed bill of entry for clearance. They are thus in effect being tendered and should be accepted.

3. The departmental representative reiterates the reasoning in the Commissioner's order.

4. The affidavit affirmed on 3-1-2001 by Devendu Mehta, Chairman of Veekay Products Pvt. Ltd. does not indicate that the company purchased the import licences from Betul Oil & Flour Mills Ltd. and "transferred for importation part of the quantity of Vitamin B2 in favour of M/s. Puja Enterprises after receiving the full consideration." It further indicates that Devendu Mehta "gave the two licences to Mr. Venugopal, Appraiser of SIIB on 24th December, 1999." It does not indicate when the transfer took place. Two letters of Veekay Products Pvt. Ltd. to the appellant, each relating to one licence, claiming to incorporate the transfer of the licence to the buyer, do not indicate any date. Going by the affidavit of Mehta, all that can be said that the licences were transferred on or before 3rd January, 2001 when Mehta affirmed this affidavit. It is not really possible to say that the

licences have been transferred to the appellant when it imported the goods.

5. Counsel for the appellant is, of course, right when he says that for a transfer to be made for a change in ownership in property, there is no requirement that the property must be physically handed over. Thus, for example, a man may sell to another a piece of property movable or immovable which he owns but which is in the possession of a third party. Once he does so, the title to these goods vests in the transferee. It is however perfectly possible that the transferee will not be able to enjoy the property physically, though he is legally the owner; the third person who was in possession of the goods when the property was transferred may refuse to part with the property. In the case before me, even on the assumption that the licences were transferred to the appellant before the bill of entry was filed, the fact remains that the Customs copies of the licences in question were not at any time physically handed over to the appellant. The appellant thus had not at any time been in physical possession of these licences. It is also clear from Mehta's affidavit that he handed over these licences to an officer of the SIIB branch of the Custom House on a date before the goods were imported. The licences therefore could not have been presented for clearance by the appellant.

6. I am unable to accept the contention of the appellant that tendering of the licences by the Chairman of Veekay Products Pvt. Ltd. to the Custom House is sufficient, and it is up to that organisation to see whether the licences covered the goods or not. The practice in the Custom House is that the importer of the goods must present to the assessing officer the bill of entry along with other documents which are required for their clearance. He must do so directly or through an agent. The import licences are in two copies, the customs and exchange control copy. The first copy is required for clearance of goods through Customs and the second is utilised for purpose of exchange control containing on it details or remittance of money to the foreign buyer. The Customs copy of the licence is essential for clearance of the goods. The exchange control copy cannot substitute for this. This Customs copy was never in the possession of the appellant and therefore it could be not presented by it before the Customs for clearance. Nor can the handing over of the licence by Veekay Products Pvt. Ltd.'s chairman to the SIIB be considered to be tendering of the licence for the purpose of clearance of the goods in question. Two possibilities exist, that Veekay Products Pvt. Ltd. had or had or not transferred the licence to the appellant. If, it had not, the handing over of the licence would not by any means be tendering the licence to the Customs on behalf of the appellant. Even if the licence by then has been transferred, the act of handing over the licence to the Custom House would still not help the appellant, Mehta or Veekay Products Pvt. Ltd. was not its agent. What has happened is that although there is on record a transfer of the licence to the appellant, it has not been physically parted with by Veekay Products Pvt. Ltd. The requirement that the importer must tender the licence to the Customs department has not been complied with in this case, and the Commissioner rightly observes that it was up to the appellant to ensure that it obtained the licence from the person whom it claimed that it purchased. The Custom House cannot be expected to act as an agent or representative of the importer.

7. I am not able to interfere with the Commissioner's orders that the importation of the goods was not covered by the licence. However, from the facts indicated above, it would be clear that there was no deliberate attempt by the appellant to evade any prohibition or it appears to have been got embroiled for no faults of it. It is in the dispute between the original licensee Betul Oil & Flour Mills

Ltd. and the Custom House, as to the acceptability of the licence issued to it. I therefore do not consider that penalty was imposable and set it aside.

8. The appeal is accordingly allowed in part.