

Shawkat Kamal Vs Collector of Customs

Court: Calcutta High Court

Date of Decision: April 12, 1991

Acts Referred: Customs Act, 1962 " Section 49

Citation: (1992) 57 ELT 276

Hon'ble Judges: N.K. Mitra, J

Bench: Single Bench

Judgement

N.K. Mitra, J.

The writ petitioner's case as stated inter alia, is that the writ petitioner carries on business as manufacturer of boot and shoe

uppers, leathers hand gloves and other leather products at No. 9, Harinbari First Lane, Calcutta - 700 073 under the name and style of Eskay

Leather Products as its sole proprietor. The said firm is a registered SSI unit under the Directorate of Cottage and Small Scale Industries, West

Bengal and the writ petitioner is also a registered exporter under the Council for Leather Exports as Manufacturer Exporter. For the purposes of

the leather goods in the writ petitioner's factory, the petitioner has from time to time to import stamping foil from West Germany. Upon coming to

learn that M/s. Winsome Steel Trade of 6A, Clive Row, Calcutta has imported a consignment of one pallet stamping foil from Leohard Cruz GmbH

& Co., West Germany per vessel s.s. Bengal Progress in or about January, 1989 against transferable additional licence being No.

P/W/3179939/C dated 9-2-1988 and P/W/3170180/C dated 4-2-1980, the writ petitioner purchased the said one pallet of stamping foil on High

Sea Sale Agreement between the writ petitioner and the M/s. Winsome Steel Trade together with the said licence and the said vessel carrying on

the said goods thereafter arrived at the port Calcutta in or about April, 1989. On or about 24th July, 1989, after the documents being retired by

the said Winsome Steel Trade, the writ petitioner's clearing agent, M/s. Hindusthan Shipping Agency, Calcutta duly filed Bill of Entry for Home

consumption in respect of the said goods. The writ petitioner, from an endorsement of the Bill of Entry, it would appear that M/s. Winsome Steel

Trade duly declared that they had sold the said goods to the writ petitioner on High Sea Sale basis in terms of the agreement dated 20th February,

1989 and the Customs Duty, port charges, sales tax, octroi interest etc. and all other clearing charges as involved will be borne by the writ

petitioner. The writ petitioner further contends that from the Bill of Entry, it would also appear that the authority concerned provisionally assessed

the said goods and upon the writ petitioner's payment of assessed duty of Rs. 88,630.53 under Bill of Entry No. 1-1492 dated 8th September,

1989 and the said goods were duly warehoused u/s 49 of the Customs Act, 1962. The assessment of the said goods by the authority concerned

was made in terms of the exemption notification being No. 22A/85-Cus (as amended) which would appear from the endorsement made on the Bill

of Entry itself and the said assessment of the Bill of Entry and subsequent warehousing of the said goods were made by the authority concerned

pending determination of the end-use of the said goods in leather industry. According to the writ petitioner, he made several representations to the

concerned Customs authorities for due clearance of the said goods that without any effect.

Previously, on 9th of May, 1989, the writ petitioner was constrained to make an application u/s 226 of the Constitution of India in this Hon'ble

Court against the refusal to clear by the concerned Customs authorities a similar consignment of stamping foil imported by the writ petitioner on

earlier occasion, and on 10th of May, 1989, the Hon'ble Mr. Justice Manoj Kumar Mukherjee passed an interim order on the said application to

the effect that pending disposal of the application there would be an interim order to the extent that the Customs authority shall not enforce

production of the Bank guarantee for release of the goods in question, but the other terms insisted upon by the Customs authority for release of the

goods as appearing in the endorsement made in the Bill of Entry might, however, be enforced. Ultimately, the said writ application was allowed in

part by the Hon'ble Mr. Justice Susanta Chatterjee on 28th August, 1989 to the extent that the Customs Authority at the time of release of the

imported goods as claimed in the said writ application, will not insist upon the condition for production of manufacturer's catalogue/literature

regarding the use of leather industry and explanation regarding valuation in terms of 1"/200" (on surface area basis), but the petitioner will have to

produce end use bond and other necessary bonds as to the actual consumption of the stamping foil in the leather industry. The said decision is also

reported in 1984 (44) ELT 409 (Cal.). Since the Customs authorities did not act in terms of the said judgment, the writ petitioner filed an

application for contempt and a Rule was issued by the Hon'ble Mr. Justice Susanta Chatterjee on 28th September, 1989.

At the time of issuance of the Rule, the learned Counsel, appearing on behalf of the Customs authorities on instruction given undertaking that the

goods would be released in terms of the original order within a week from date. Subsequently on or about 8th of June, 1990, the petitioner was

served with a show cause notice being Annexure -"I" to the writ application. Challenging such show cause notice and also the refusal to release the

imported stamping foils by the Customs authorities the writ petitioner has filed the present writ application inter alia on the grounds that since the

stamping foils falls within the exemption notification being No. 224/85-Cus., dated 9th of July, 1985. The respondents cannot claim for production

of manufacturer's catalogue/literature and explanation regarding valuation in terms 1"/200" on surface area basis. The Customs authorities,

however, have opposed the writ application by filing their affidavit-in-op-position inter alia on the ground that production of manufacturer's

catalogue/literature is being insisted by the Customs authorities because of the fact that during the course of searches carried out by the Special

Intelligence and Investigation Branch (SUB) some catalogues of the manufacturers of the stamping foils were seized. A perusal of the said

catalogues, it was revealed that the stamping foils were being used for diversified industry as packing, greeting cards, book binding, graphic arts,

radio, television, automobiles, etc. [para 3 (b) of the affidavit-in-opposition] and in para 3(f) of the affidavit-in-opposition, it is stated that

intelligence has been gathered that large quantities of the stamping foils cleared under Notification No. 224/85-Cus. for using the leather industry

are actually sold in the open manufacture of greeting cards, plastic articles, packing materials, book binding, printing designs or textiles, picture

frames, marking and labelling of finished products like pens, pencils, etc. and the investigation conducted by the Special Investigation and

Intelligence Branch, Bombay, has revealed that there is a large scale misuse of the Notification No. 224/85-Cus. claiming exemption from the

payment of Customs duty by professing the goods to have been coming for leather industry and consequently Customs duty to the tune of crores

of rupees have been lost by the Government and that the Calcutta Customs Collectorate has now been following the guidelines in this regard

evolved by the Bombay Customs House.

Since the benefit of the Notification No. 224/85-Cus. is subjected to the stamping foils being used in the leather industry of the importers and

because the clearance is allowed under open general licence subject to actual user/industrial condition, before allowing the clearing of stamping foils

under the aforesaid Notification, the importers, as indicated in the aforesaid guidelines is required to submit the manufacturer's catalogue and/or

literature to establish their claim that the imported stamping foils are meant for use in leather industry. Moreover, as the importers are claiming

benefit of concessional rate of duty, the onus is on them to establish that the imported stamping foils is specifically meant for use in leather industry

as per the manufacturer's catalogue the importer is also required to execute an end-use bond backed by Bank Guarantee for whole of the

difference in duty between standard rate of duty and concessional rate of duty. According to the Customs Authorities the requirement of the

petitioner to produce the literature/catalogue of the manufacturers is in the nature of the investigation of the fact to ascertain for what use the

imported stamping foils are being imported.

2. The same question came up for consideration before the Hon^{ble} Mr. Justice Susanta Chatterjee in the writ application filed by the writ

petitioner on earlier occasion on similar grounds and His Lordship while allowing the said writ application in part held inter alia that production of

the manufacturer's catalogue/literature is not relevant at the time of release of the goods. It is not appreciated that the onus lies upon the writ

petitioner to produce the manufacturer's catalogue for examination of the use of the stamping foils. The end-use bond will clearly meet the purpose

as to whether the stamping foil as imported is used in the leather industry or not. Similarly there is no necessary of giving explanation regarding any

valuation in terms of 1"/200" as claimed by the Customs Authorities and those two conditions are not really relevant and required for the purpose of

release of the imported stamping foils but the writ petitioner will have to execute a necessary documents and/or bonds to the satisfaction of the

Customs authorities that the stamping foils imported will be used in leather industry. They will produce certificate of the consumption of the

imported stamping foils in the leather industry to be verified by the Central Excise Authority and/or any other authority concerned/and the Customs

authorities at the time of release of the imported stamping foils will not insist on the conditions for production of the manufacturer's

catalogue/literature regarding the use of the imported stamping foils in leather industry and the explanation regarding valuation in terms of 1"/200"

(on surface area basis) Shawkat Kamal Vs. Collector of Customs and Others,

3. Since it is held by this Court in the decision as referred to above that at the time of release of the imported stamping foils the Customs authorities

will not insist on the conditions for production of the manufacturer's catalogue/literature regarding the use of such stamping foils in leather industry

and explanation regarding valuation in terms of 1"/200" (on surface area basis) and the end-use bond to be produced by the importer will clearly

meet the purpose as to whether the stamping foils as imported is used in the leather industry or not, the impugned show cause notice issued by the

Customs authorities in the present case being Annexure I on the ground of the writ petitioner's failure to produce manufacturer's

catalogue/literature cannot be sustained in law in view of the ratio of the decision made by this Hon'ble Court on earlier occasion in the matter as

referred to above. So far as the stand taken by the Customs authorities in the above mentioned case and in the present writ application are

concerned those are identical and considering the stand taken by the Customs authorities this Court had come to the conclusion in the aforesaid

case that production of the manufacturer's catalogue/literature is not relevant at the time of release of the imported goods, and I also find no reason

to make a departure from the findings arrived at by the Hon'ble Mr. Justice Susanta Chatterjee in the case as referred to above.

4. Accordingly, the impugned show cause notice (Annexure - "I") stands quashed and I hold that the Customs authorities at the time of release of

the imported goods as claimed in the instant case will not insist on the condition for production of the manufacturer's catalogue/literature regarding

the use of the imported stamping foils in leather industry but the writ petitioner will have to produce the end-use bonds and other necessary bonds

as to the actual consumption of such stamping foils in the leather industry, to the satisfaction of the Customs authorities and he will also produce

certificate of the consumption of the imported stamping foils in the leather industry to be verified by the Central Excise Authority and/or any other

authority concerned.

5. The writ application is accordingly disposed of as above without any order as to costs. Hearing fee is assessed at 60 Gms.

6. All parties to act on a signed copy of the operative part of this judgment and order on the usual undertaking.