

(1986) 01 BOM CK 0056

Bombay High Court

Case No: Writ Petition No. 2300 of 1984

M. Shashikant and Co. and
others

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision: Jan. 31, 1986

Citation: (1986) 9 ECC 150 : (1988) 19 ECR 379 : (1987) 30 ELT 868

Hon'ble Judges: M.L. Pendse, J

Bench: Single Bench

Judgement

1. The petitioners are a firm carrying on business of dealing in diamonds and since the year 1981 have been recognised as an Export House. The petitioners Nos. 2 to 6 are partners of the firm. The petitioners, as a registered Export House, are issued various licences such as Additional Licence, R.E.P. Licence and Imprest Licences. Under Paragraph 183 of the Import Policy for the period AM-81 and AM-82, a facility was granted to Export Houses to import CGL goods against such licences subject to the condition that such goods should be sold to actual users. Paragraph 382 of the relevant Hand Book prescribes that the licence holders could grant a letter of authority in favour of persons who arrange import of goods.

2. The petitioners were issued Imprest Licence bearing No. 0449345 dated May 12, 1981 for the import of uncut and unset diamonds of the value of Rs. 3,59,34,782/- subject to an export obligation of Rs. 5,52,84,280/-. One of the conditions of the licence was that it would be subject to the conditions in force relating to the goods covered by the licence as described in the Import Trade Control Policy Book for the period during which the licence has been issued or any amendments thereto made upto and including the date of issue of the licence, unless otherwise specified. The petitioners gave letter of authority in favour of M/s Mangla Brothers on January 14, 1982 to import permissible O.G.L. items under the said licence. The petitioners were at pains to ensure that only permissible items would be imported and M/s Mangla Brothers undertook to indemnify the petitioners in respect of any liability arising

from the imports. M/s Mangla Brothers imported 791.10 metric tonnes of beef tallow by entering into contract with foreign concern at New Zealand and had also agreed to sell the same to M/s Aron Chemicals Private Limited, Bombay who represented themselves as being actual users of beef tallow. The goods were confiscated on import by an order of Collector of Customs but were allowed to be cleared against a redemption fine of Rs. 13 lakhs. M/s Mangla Brothers filed Writ Petition No. 1734 of 1983 in this Court and interim relief was granted permitting M/s Mangla Brothers to clear the goods against furnishing a Bank guarantee of Rs. 13 lakhs. In pursuance of the interim order, the goods were cleared.

3. On June 5, 1981, a public notice was issued whereby Appendix 8 to the Import Policy was amended and instead of existing Item 44 which was restricted to mutton tallow, the Item substituted was tallow of any animal origin including mutton tallow. Even after June 5, 1981, import of beef tallow was made by various persons and the same was duly cleared by the Customs authorities. In July 1983, it was discovered that some unscrupulous people had adulterated vanaspati by using beef tallow in its manufacture and that discovery led to the uproar in the country. The petitioners were then placed under abeyance by secret circular issued on November 9, 1983.

4. On March 24, 1984, a show cause notice was issued to the petitioners, M/s Mangla Brothers, and M/s Aron Chemicals Private Limited, Bombay alleging that the import of beef tallow was illegal and unauthorised and in contravention of Clause 8 of the Imports Control Order. The petitioners filed a reply pointing out that they had nothing to do with the import and cannot be held responsible. The respondent No. 2, by order dated September 22, 1984 held that the import was unauthorised and despite the fact that the petitioners had expressly given a letter of authority for permissible items, M/s Mangla Brothers had exceeded that authority. The respondent No. 2 declined to absolve the petitioners of the liability solely on the ground that the petitioners were holders of Imprest licence. The respondent No. 2, on the strength of this finding, debarred the petitioners from import of goods for the period of five years and that order is under challenge.

5. Shri Desai, learned counsel appearing on behalf of the petitioners, submitted that the impugned order suffers from serious infirmity as the respondent No. 2 had recorded a clear-cut finding that M/s Mangla Brothers who were letter of authority holder were expressly advised to operate upon the licence for the times permissible under the policy and in spite of that M/s Mangla Brothers exceeded the authorisation and imported beef tallow. Shri Desai submits that on the strength of this finding, it is impossible to hold that the petitioners had abetted the unauthorised import of beef tallow. The submission is correct and deserves acceptance. Clause 8 of the Import Order confers power on the authorities to debar the licence holder for importing goods provided he has committed any one of the violations set out in the said clause. Shri Bulchandani, learned counsel appearing on behalf of the respondents, was unable to point out any one of the violations which

could be attracted in the present case and had desperately submit that the petitioners abetted the unauthorised import of beef tallow. It is impossible to accede to this submission. A person could be guilty of abetment provided he has connived at or has actively associated in commission of unauthorised act. The respondent No. 2 has found that the petitioners specifically advised M/s Mangla Brothers to import only those goods which were permissible but M/s Mangla Brothers exceeded the authority. On the strength of this finding, it is impossible to hold that the petitioners had abetted the import of unauthorised beef tallow.

6. Shri Bulchandani then relied upon Paragraph 383 of the Hand Book of Import-Export Procedures, 1980-81 to claim that the petitioners will be liable to the same legal obligations and penalties arising out of the Agent's action or inaction under law, as he himself would be otherwise. It was urged that the petitioners can be legally held guilty for the illegal acts of his Agent. It is impossible to accede to submission of the learned counsel. A principal can never be guilty for wrongful acts of the Agent which were done without notice to the principal. The petitioners were not responsible or were not even conscious as to what was imported by M/s. Mangla Brothers. In these circumstances, it is impossible to sustain the impugned order passed by respondent No. 2 and the petitioners are entitled to the relief sought.

7. Accordingly, petition succeeds and rule is made absolute in terms of prayer (a). In the circumstances of the case, there will be no order as to costs.