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Bombay High Court

Case No: Appeal No. 267 (On Appeal against 1989 (39) ELT 369) , of 1985 in Writ Petition No. 2665 of 1984

Union of India and others		APPELLANT
	Vs	
Suwidhi Enterprises and another		RESPONDENT

Date of Decision: Aug. 14, 1987

Citation: (1989) 40 ELT 317

Hon'ble Judges: V.P. Tipnis, J; S.P. Bharucha, J

Bench: Division Bench

Judgement

Tipnis, J.
This is an appeal against the judgment and order dated 19th February 1985 passed by the learned judge of this Court by which he was pleased to allow the writ petition filed by the respondents.

2. The respondents by the writ petition challenged the action of the appellants of not allowing the clearance of snap fasteners upto the value of 5% of the licence on the ground that the limit of 5% of the value is already exhausted by the earlier importation of zip fasteners upto 5% of the limit of the licence.

3. The respondents were granted licence on 21st December 1983. Under the said licence they had already imported zip fasteners to the tune of 5% of the face value of the licence. On 5th of March 1984 they imported snap fasteners upto 5% of the value of the same licence. On 5th of May 1984 they filed bill of entry but clearance was refused by the authorities. The contention of the authorities was that on proper interpretation of General Note (3) in Column (5) against Entry-O of Appendix-17 of the Import and Export Policy for April 1983 to March 1984, it was impermissible for the respondents to again import snap fasteners of the 5% of the value of the licence inasmuch as they had already imported zip fasteners earlier of the 5% of the value of the licence. The respondents contended that on

proper interpretation of Appendix-17 and especially Note (3) in Column (5) against Entry-O in the said Appendix, it is clear that the respondents were entitled to import snap fasteners as also zip fasteners separately of the value of the 5% each of the value of their licence. The learned judge on the basis of the relevant entries and notes in Appendix-17 came to the conclusion that the respondents were entitled to again import snap fasteners as they had done of the 5% of the value of the licence. The learned judge noted that snap fasteners and zip fasteners are enumerated specifically as separate items in Column (4) of the said Appendix at serial Nos. (xiii) and (xiv) respectively, under the broad heading of "Trimmings and Embellishments" against the export product "Cotton readymade garments, hosiery and knitwear." The learned judge noted that the wording of the said Note (3) shows that the import of the items mentioned under its sub-clauses (i) and (ii) is not to exceed 5% of the value of the licence subject to a maximum of Rs. 50,000/-. The learned judge further found that a plain reading of the note as well as the items mentioned in Column (4) of the table shows that the snap fasteners and zip fasteners have been all along treated as separate and distinct items. The learned judge found that a plain reading of Note (3) would undoubtedly suggest that each of the said two items, namely, snap fasteners and zip fasteners, is permitted to be imported to the extent of 5% of the value of the licence. The learned judge was accordingly pleased to make the Rule absolute in terms of prayer (a) of the petition.

4. Mr. Bulchandani, the learned Counsel for the appellants, firstly contended that the Chief Controller of Import and Exports, had issued a classification dated 14th October 1983 indicating that the 5% mentioned in Note (3) in Column (5) of Appendix-17 was to be understood as applicable to zip fasteners and snap fasteners taken together and this is how everybody concerned understood the said Note. The said alleged clarification was, however, neither produced before the learned single judge, nor is produced before us. Therefore it is unnecessary to consider the aspect as to how far such clarification is binding and what its real terms are.

5. Mr. Bulchandani further contended that on proper interpretation of Note (3) in Column (5) against Entry-O in Appendix-17, it must be held that the holder of the licence is entitled to import snap fasteners and zip fasteners taken together for the value not exceeding 5% of the value of the licence.

6. We are unable to accept this submission made on behalf of the appellants. We find that the wording of Note (3) read with items mentioned separately in Column (4) of Appendix 17 against Entry-O makes it clear that snap fasteners and zip fasteners are treated as separate items and on the plain reading of Note (3) it is clear that the licence holder is entitled to import snap fasteners and zip fasteners each upto 5% of the value of the licence. In view of this, we find nothing incorrect in the interpretation put by the learned single judge on the relevant entry and the relevant note.

7. Accordingly, we do not find any substance in the appeal and the appeal is dismissed with no order as to costs.