

CASE NO.:  
Appeal (civil) 2378 of 2007

PETITIONER:  
M/s Taarika Exports and Anr

RESPONDENT:  
Union of India and Anr

DATE OF JUDGMENT: 07/05/2007

BENCH:  
Dr. ARIJIT PASAYAT & D.K. JAIN

JUDGMENT:  
J U D G M E N T

CIVIL APPEAL NO. 2378 OF 2007  
(Arising out of SLP (Civil) No. 25852 of 2005)

Dr. ARIJIT PASAYAT, J

1. Leave granted.

2. Challenge in this appeal is to the order passed by a Division Bench of the Delhi High Court dismissing the Letters Patent Appeal filed against the order of a learned Single Judge.

3. Background facts in a nutshell are as follows:

4. A show cause notice was issued to the appellants under Section 4L of the Imports and Exports (Control) Act, 1947 (in short the 'Act') for action under Section 4-I and under clause 10 for action under clause 8 of the Import (Control) Order, 1955 (in short 'Control Order') read with Section 20(2) of the Foreign Trade (Development & Regulation) Act, 1992 (in short "Foreign Trade Act") for not exporting the goods as also utilizing the imported goods and failure to export within the stipulated time. The appellants during the material point of time were engaged in the import and export activities under the Import and Export Code. On 13.10.1991 the Regional Licensing Authority had issued an advance licence to the appellants. The appellants undisputedly used the licence in full so far as the import of raw materials thereunder free of customs duty is concerned but only a part of the finished goods under the said licence was exported. Resultantly, there was a shortfall on account of export obligation. Appellants submitted that the conditions under the licence were unrealistic and, therefore, non-fulfillment of the obligation was beyond their control. The show cause notice in question was issued on 7.5.1995 proposing, inter alia, imposition of fiscal penalty for non fulfillment of export obligation under the licence as well as for mis-utilization of the goods valued at Rs.9,10,125/- imported under the said licence free of customs duty. Appellants submitted their reply to the show cause notice. The Additional Director General of Foreign Trade (in short 'DGFT') passed an order dated 13.11.1995 imposing a penalty of Rs.45 lakhs for shortfall in export obligation to the extent of Rs.27,20,462/-. An appeal was preferred before the Appellate Committee. By order dated 12.8.1997 the Appellate Committee dismissed the appeal of the appellants.

Subsequently, a writ petition was filed under Article 226 of the Constitution of India, 1950 (in short the 'Constitution') before the Delhi High Court. The writ petition was numbered as CWP. 623 of 1998. By judgment and order dated 30.5.2003 learned Single Judge dismissed the writ petition holding that there was no ground to interfere with the orders of the adjudicating authority as well as the Appellate Committee. A Letters Patent Appeal was filed which as noted above was dismissed by a Division Bench.

5. Stand of the appellants is that what was really alleged related to a technical non-compliance of an export obligation. Such a compliance cannot be expected and demanded as the same was impossible to be done on the basis of quantity of raw materials that the appellants were allowed to import under the concerned licence.

6. Learned counsel for the respondents on the other hand submitted that the authorities below and the High Court have clearly noted the infractions and the penalty imposed was within the permissible limit of Section 4-I(1) of the Act read with Section 20(2) of the Foreign Trade Act.

7. Relevant portions of the show cause notice read as follows:

"1. You had obtained an advance licence No.0300410 dated 13.10.1991 for a cif value of US\$ 40,400 for import of the following items:

1. Dupion Yarn 1210 Kgs.
2. Mulberry Raw Silk 75.00 Kgs.
3. Fusing lining anatrial 6750 Kgs.

2. The said licence was issued from the office of Jt. DGFT, Bombay. The above said licence was issued to you. Subject, inter alia, to the following conditions:

(1) You would export 5400 Nos. of Mulberry mixed jackets/blazer with fusing lining material for an fob value of Rs.36,42,800/- (US\$ 1,41,603.66) within a period of nine months from the date of clearance of the first consignment.

(2) To ensure fulfillment of export obligation you would, before clearance of the first consignment, execute a bond/LUT.

(3) The goods imported against the said advance licence would be utilized exclusively in the manufacturing of the resultant products.

(4) In the event of the licensee falling (a) to fulfill the export obligation within the prescribed time limit stipulated above or (b) to produce the prescribed documents/information within 30 days after the expiry of the export obligation period; the bond/LUT agreement condition shall be enforced and the licensee shall be liable to the different

follow up, penal actions prescribed in the Import Export Police and Handbook of procedure 1992-93. The licensee shall also pay without demur to the customs authorities the concerned duty on the proportionate quantity of goods corresponding to the products not exported. Any shortfall will also be liable to adjustment from any application for licence pending in this office or received in future.

(5) The action in clause 4 shall be without prejudice to any other action that may be taken against the licensee under the Import and Export (Control) Act, 1947 and Import (Control) Order dated 07.10.1955 as amended.

3. In terms of the above conditions you executed an indemnity -cum-guarantee bond with the licencing office on 14.01.1992. It is observed that you requested the Jt. DGFT, Bombay on 21.02.1992 for amendment of licence to import only dupion yarn 1100 kgs. and mulberry raw silk of 250 Kgs. and delete item at Sl. No. 3 fusing lining material of CIF value of US\$ 6,750/- (and committed to fulfil the export of resultant product for an fob value of US\$ 1,41,603.66 and also to amend the export description i.e., mulberry mixed silk garments (shorts, pants, blazers and skirts) containing dupion yarn of 1100 kgs. and mulberry raw silk of 250 Kgs. The request was considered by Jt. DGFT, Bombay on 31.03.1992 and the licence was accordingly amended.

4. According to information available on record and in the absence of any documentary evidence furnished by you, it is evident that you had made import 1177.00 Kgs. of dupion yarn and mulberry raw silk 70.00 kgs. against the said advance licence in January 1992. However, you had exported 2429 pcs. of mulberry silk garments weighing dupion yarn 33.141 kgs. and 78.889 of mulberry raw silk for fob value of Rs.9,62,337.92 and failed to export the remaining quantity of 2971 pcs for fob value of Rs.27,20,452/- within the stipulated time. Vide letter dated 22.12.92 you made a request to Jt. DGFT Bombay office for grant of extension of six months enabling them to export the balance quantity by 30.04.1993. You again applied to Jt.- DGFT Bombay office for another extension which was rejected by RALC in its meeting held on 09.04.1993. As such the period of export obligation expired on 30.04.1993. Subsequently you approached this office advance licensing committee several times for extension in export obligation period against the subject advance licence but your request was rejected every time. You were also advised by this office on 29.11.94 to produce certain documents/information in r/o. advance licence in question. You sent your reply on 05.12.1994 and supplied this office photocopies of advance licences relating to earlier advance licences and other related documents but failed to produce

the requisite documents in r/o the advance licence in question. However, you were again reminded on 02.02.1995 to furnish the requisite information/documents. In reply to this office letter, you furnished the photocopies of bank certificate of export and realization, etc. but again you failed to send us the requisite information / documents."

The adjudicating authority inter-alia noted as follows:

"The said licence was issued to them by the office of the Joint Director General of Foreign Trade, Bombay, subject, inter-alia, to the following conditions:

(i) They would export 5400Nos. of mulberry mixed silk jackets/blazer viith fusion lining material for an FOB value of Rs.36,42,800/- (US\$ 1,41,603.66) within a period of nine months from the date of clearance of first consignment.

(ii) To ensure fulfillment of export obligation they would, before clearance of the first consignment, execute a bond for Rs. 42,74,529.16 with Bank Guarantee for Rs. 5,91,729.16.

(iii) The goods imported against the said Advance licence would be utilized exclusively in the manufacturing of the resultant product.

(iv) In the even of their failure (A) to fulfill the export obligation within the prescribed time limit stipulated above or (B) to produce the prescribed documents/information within 30 days after the expiry of the export obligation period, the bond/LUT agreement condition shall be enforced and the licensee shall be liable to the different follow up, penal actions prescribed in the import-export police and handbook of procedures, 1990 \027 93. The licensee shall also pay, without demur to the customs authorities, the concerned duty on the proportionate quantity of goods corresponding to the products not exported. Any shortfall will also be liable to adjustment from any application for licence pending in that office or received in future.

(v) The action in clause (iv) shall be without prejudice to any other action that may be taken against the licensee under the Import (Control) Order, 1955, as amended."

8. The Appellate Committee also analysed the position and concurred with the view expressed by the adjudicating authority.

9. We find that the authorities have analysed the factual position in detail and have concluded that there was infractions of the conditions imposed under the licence. It is to be noted that before the learned Single Judge a plea was taken

that the goods are still lying with the appellants. There was no question of the appellants having used or utilized them in violation of the conditions imposed by the licence. Learned Single Judge noted that no such plea was taken by the party earlier. Neither in the reply to the show cause notice nor before the Appellate Committee such a plea had been taken. Before this Court also an attempt was made to submit that the goods are lying in stock and, therefore, there was no question of utilization. No material in this regard is produced before the authorities as was rightly observed by the learned Single Judge.

10. The penal provision is contained in Section 4-I(1) of the Act. The same reads as follows:

"4-I(1). Liability to penalty.- Any person who,

(a) in relation to any goods or materials which have been imported under any licence or letter of authority, uses or utilizes such goods or materials otherwise than in accordance with the conditions of such licence or letter of authority; shall be liable to penalty not exceeding five times the value of goods or materials, or one thousand rupees, whichever is more, whether or not such goods or materials have been confiscated or are available for confiscation."

11. The stand that the conditions were incapable of compliance seems to be at variance with the stand taken earlier. By letter dated 22.12.1992 appellants made a request to the Regional Licensing Authority for grant of extension of six months to enable them to export the balance quantity by 30.4.1993. They again applied to the Joint Director General of Foreign Trade, Bombay Office for further extension. The same was rejected. Period of export obligation expired on 30.4.1993. Subsequently, the appellants approached DGFT office several times for extension of export obligation period which was rejected. Therefore, the plea that the conditions were incapable of compliance has been rightly turned down by the authorities and the High Court.

12. Finally, it was submitted that considering the value of the articles involved, imposition of penalty of Rs.45 lakhs is extremely high. The minimum penalty provided is Rs.1,000/- and the maximum is five times of the value of goods involved.

13. Considering the value of the articles involved we are of the view that penalty of Rs.20 lakhs instead of Rs.45 lakhs would meet the ends of justice. It is submitted that pursuant to the order of this Court dated 9.12.2005 a sum of Rs.20 lakhs had been deposited by the appellants. If that is so, there shall not be requirement of making any further deposit.

14. The appeal is disposed of accordingly with no order as to costs.