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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 1554/2012

**M/S WORLDWIDE LOGISTICS SURVEY AND INSPECTION
GROUP AND AFFILIATES**

..... Petitioner

Through Mr. Rakesh Tiku, Sr. Advocate with
Mr. Abhinav Bajaj, Advocate.

versus

UNION OF INDIA & ORS

..... Respondent

Through Mr. Kamal Nijhawan, senior standing
counsel with Mr. Sumit Gaur,
Advocate for R-2 & 3.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE R.V.EASWAR

ORDER

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22.03.2012

M/s Worldwide Logistics Survey and Inspection Group and Affiliates has filed the present writ petition for quashing impugned Alert Circular No.01/2012-JNCH dated 16.01.2012 and order dated 5th March, 2012 passed by Commissioner of Customs (Import), Nhava Sheva.

2. The petitioner had earlier filed W.P.(C) 631/2012, which was disposed of by this Bench on 31st January, 2012. For the sake of completeness, we are reproducing the said order in entirety:-

“1. The petitioner World Wide Logistics Survey and Inspection Group and Affiliates is aggrieved by the alert circular dated 16.01.2012. In the circular it is mentioned that the petitioner

had issued certificate/form of declaration/undertaking in respect of consignment which was imported into India vide bill of lading BAXSSS019014 dated 23.11.2011.

2. The petitioner had issued the pre-shipment inspection certificate in which it was declared as under:-

“Declaration/undertaking

1. The consignment does not contain any type of arms, ammunition, mines shells cartridges, or any other explosive material in any form, either used or otherwise and that the consignment was checked for radiation level and it does not have radiation levels gamma and neutron) in excess of natural background. Following are the values of :-

(i) Background radiation level (0.2uSv/h) at the place of examination.

(ii) Maximum radiation level on the scrap not more than (0.2uSv/h) measured at 1 metre from the surface of the load uSv/h)

2. The import consignment is actually metallic scrap/scrap / defective as per the internationally accepted parameters for such a classification.

3. I/We hereby declare that the particulars and statements made in this certificate are true and correct and nothing has been concealed or held therefrom.”

3. On examination of the said consignment, it is stated in the circular that the following articles/goods were recovered:-

“Eight Cylindrical shaped, military green colour object open on one side and having marking as “Rocket 2.75 war-head with motor MK-66 MOD 4 Ammunition, incendiary UM – weight 174 pounds”

One object of the same appearance, but partially defaced by applying black paint.

17 object of the similarly appearance, but

completely defaced by applying paint.

Other items of scrap mainly crush & cut cylinders.”

4. Thereafter, impugned circular records as under:-

“ 4. The said Inspection Agency has also declared that “the import consignment is actually metallic scrap/seconds/defective as per the internationally accepted parameters for such a classification and declared the particular and statement made in this certificate are true and correct and nothing has been concealed or held therefrom.

5. The plain reading shipment inspection certificate and examination report of the Customs JNCH (PANCHANAMA dated 15.12.2011) of the goods made it appears that the inspection Agency has not seen the goods and the certificate has been issued without carrying out any inspection of the subject goods.

6. The matter has been brought to the notice of DGFT for suitable action.

7. In the light of the above, all ports where clearance of scraps are undertaken, are hereby alerted regarding possible mis-declaration of the description of the goods for which the Inspection Certificates has been issued by the said designated agency. This is for information and necessary action at you end, as deemed fit.”

5. A careful examination of para 7 expositis that the port authorities have been alerted to be careful regarding possible mis-declaration of description when examining a consignment where pre-shipment inspection certification has been issued by the petitioner. This circular does not mean that the certificate issued by the petitioner can be discarded or have to be rejected.

6. Learned counsel for the petitioner has relied

upon the order dated 24.01.2011 passed in the Writ Petition No.441/2011 titled World Wide Logistics Survey and Inspection Group and Affiliates Vs. UOI & Ors. He submits in the said case following direction were issued:-

“4. In view of the aforesaid, we are only inclined to hold that the circular dated 5th August, 2010 contained in Annexure P-1 shall not be treated to be stigmatic as far as the petitioner is concerned. Needless to say, it should not be treated that the petitioner has been black listed by the department. To clarify the said position, the respondents shall put it on its website.”

7. The said directions were issued in view of the statement made on behalf of the respondents which is quoted in para 3 and for the sake of convenience are also reproduced as under:-

“3. It is contended by Mr.Sumit Batra, learned counsel on behalf of Mr.Mukesh Anand, learned counsel for the respondent Nos.2 and 3 that the circular is an alert circular and it in no way casts a stigma and does not remotely black list the petitioner. It is also submitted by him that on certain occasions a alert circular is issued only for inspection when the goods that react the port are not in conformity with the declaration certificate. Learned counsel has further submitted that no adverse consequence has visited the petitioner.”

8. We may also note that in the said case the allegation was that mud instead of scrap as certified was imported. The factual background of the present case is different. Import of explosive, if made, is a serious matter.

9. Learned counsel for the petitioner further submits that the circular should not have been issued and in fact there is a factual mistake as outer shells or casing, in which the explosive could have been stored but no explosive or prohibited material was actually imported. This is a factual dispute and the petitioner is at liberty to

raise the said factual dispute before the authorities concerned.

10. Learned counsel for the petitioner submits that the petitioner has written letter dated 02.01.2012 to the Commissioner of Customs (Import). We have examined the said letter but the said letter is brief, cryptic and does not set out the case which has been urged before us. It is open to the petitioner to make a detailed representation and the said representation will be considered by the authorities concerned.

11. In case any such representation is made, the respondent authority will dispose it of expeditiously and communicate their order to the petitioner by post. In case there is any undue delay or an adverse order is passed, it will be open to the petitioner to challenge the same in accordance with law.

12. Dasti.”

3. After the aforesaid order was passed, the respondents obtained opinion from Atomic Energy Regulatory Board, who vide their letter dated 20-21st February, 2012 opined that they could not detect any radiation above the natural background level on the surfaces of all the six containers. However, the report given by the Commander, Staff Officer (Gunnery), Western Naval Command, Mumbai states as under:-

“4. The followings are brought out during inspection of imported scrap materials containing rocket/warhead cases in the presence of Deputy Commissioner of Customs (Docks).

- A) No explosive found in the warehead/rocket empty cases.
- B) 26 empty rocket 2.75 inch (70mm) cases with one end open, 19 cases stenciling/markings fully

defaced by applying back paint and remaining seven rocket empty cases written HS 1340-D-446-4095-HA14, 4-ROCKET 2.75 WARHEAD HE261 and MOTRO MK66 MOD4UNO182, LOT GD803K, 182-001, WT, 174LBS, IA2/Y87/S/03, USA/DOD/AYD.”

4. Thereafter, personal hearing was given to the authorized representative of the petitioner on 29th February, 2012. The submissions made on behalf of the petitioner are recorded in paragraph 12 of the impugned order dated 5th March, 2012. In the said submissions, the petitioner had contended that the scrap identified was carrying “cases” and not “shells” of rockets, and, therefore, are not covered by the policy restriction of DGFT i.e. paragraph 2.32.1. The aforesaid contention has been rejected by the Commissioner of Customs (Imports), Nhava Sheva in the order dated 5th March, 2012, recording as under:-

“M/s. WLSI were also asked to respond to their certification to the effect that the present consignment is actually metallic scrap (HMS 1 & 2) as per internationally accepted parameters, whereas, there are 26 Rocket cases in cylindrical form, which are 6.5 feet each. As per the ISRI (Institute of Scrap Recycling Industries, Inc.) standard of HMS 1 & 2, the scrap goods are not as per internationally accepted norms for such classification. For this the representative of M/s. WLSI stated that the scrap description was made as per the suppliers invoice and packing list provided by exporter.

14. M/s. WLSI were notified by the Directorate General of Foreign Trade, Ministry of Commerce and Industry vide Public Notice No.35

(RE-2005)/2004-09 dated 28.07.2005, as one of the Inspection and Certification Agencies (Appendix-5 of Hand Book of Procedures of Foreign Trade Policy). As such, this office earlier intimated the DGFT on 20.12.2011 about the contents of the above consignment and pre-shipment certificate issued by WLSI. In continuation of the said communication, the above details viz. third party inspection by AREB, Navy and WLSI response thereof are being informed to DGFT for further necessary action. Similarly, these details are being informed to all the Customs formations to whom Alert Circular No.1/2012 JNCH dated 16.12.2012 was issued. The clearance of the subject consignment covered by B/E. No. 5380856 dated. 05.12.2011 in JNCH is separately decided by the competent officer as per the provisions of the Customs Act, 1962.”

5. Learned counsel for the petitioner has drawn our attention to paragraph 2.32.1, which reads as under:-

“2.32.1 Import of any form of metallic waste, scrap will be subject to the condition that it will not contain hazardous, toxic waste, radioactive contaminated waste/scrap containing radioactive material, any type of arms, ammunition, mines, shells, live or used catridge or any other explosive material in any form either used or otherwise.”

6. Learned counsel for the petitioner submitted that the authorities have failed to draw distinction between a “casing” in which the shell i.e. shell of a live rocket is carried/stored, and the shell itself and because of this confusion, an erroneous order has been passed. He, submits that the initial Alert Circular dated 16th January, 2012 was on a different aspect and, therefore, the impugned order dated 5th March,

2012 is vitiated on the principle approved by the Supreme Court in *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others* AIR 1978 SC 851.

7. We have examined the contentions raised by the petitioner, but are unable to agree with the same. Paragraph 2.32.1 quoted above, which is under the heading “General Procedure for Licensing of Restricted Goods” states that import of any form of metallic waste or scrap containing hazardous, toxic waste, radioactive contaminated waste, radioactive, explosive material including shells is banned. It further stipulates that live or used cartridge or any other explosive material in any form either used or otherwise is also banned. It is obvious that the intention is not to allow import of any material which was earlier used as a shell into the country as scrap because of danger and hazard involved. We may note that the petitioner, as annexure P-6, has filed Hand Book of Procedures (Vol.I) issued by the Department of Commerce, Ministry of Commerce and Industry, Government of India. However, in Annexure P-6 one of the relevant page is missing. During the course of hearing, the missing page has been furnished by the learned counsel for the respondents. The relevant extract of the applicable clause relating to certification in the Hand Book reads as under:-

“Unshredded compressed and loose form:

Import of metallic waste, scrap listed in para 2.32.2 above in unshredded compressed and loose form shall be subject to following conditions:-

- a. Importer shall furnish the following documents to the Customs at the time of clearance of goods;
- I) Pre-shipment inspection certificate as per the format in Annexure-I to Appendix 5 from any Inspection & Certification agencies given in Appendix-5 to the effect that:
 - i) The consignment does not contain any type of arms, ammunition, mines, shells, cartridges, radioactive contaminated or any other explosive material in any form either used or otherwise.”

8. A reading of the aforesaid paragraph would show that pre-shipment inspection certificate by an inspection certification agency is required to be produced/submitted by the importer to the port/custom authorities. It further stipulates that certification agency must certify that the consignment does not contain any kind of arms, ammunition, mines, shells, cartridges, radioactive contaminated or any other explosive in any form either used or otherwise. A reading of the impugned order would show that Commissioner of Customs (Import), Nhava Sheva has rightly rejected the contention of the petitioner that the certifying agency was not concerned with the quality/type of the scrap as they were not the importers and violation of paragraph 2.32.2 was not their concern. The extract quoted above shows the obligation and responsibility of the inspection certificate agency.

9. In the present case, after considering the opinion of the Commander, Staff Officer (Gunnery), Western Naval Command, Mumbai in the impugned order dated 5th March, 2012, it has been held

that the conditions stipulated in paragraph 2.32.1 read with the aforesaid clause relating to certification were not satisfied. We do not agree with the contention of the petitioner that distinction should be attracted and drawn between a casing and a shell. It is not possible to accept that the shells or immediate outer covering of the rocket are banned but carrying cases are not shells. Shells referred to will mean and include the outer covering. The Oxford Dictionary meaning of the word “casing” and “shell” reads:

“Casing: cover or shell that protects or encloses something.

Shell: a hollow metal or paper case used as a container for fireworks, explosives or cartridges.”

Any distinction of the nature suggested and pleaded by the petitioner will not be possible and create difficulties for the authorities. The intention obviously is not to permit import of scrap which contains hazardous material which was earlier used and was part of an explosive device. The words “used or otherwise” mentioned in paragraph 2.32.2 clarify that no distinction should be made between used and unused material. Caution and strictness in such cases is warranted. Liberal interpretation will be counterproductive.

10. Reliance placed on the decision in the case of ***Mohinder Singh Gill and Another*** (*supra*) is also misconceived. In the Alert Circular dated 16th January, 2012 specific reference was made to the inspection

and examination of the containers, which is recorded in the said circular. The impugned order dated 5th March, 2012 does not go beyond the Alert Circular. It is obvious that the petitioner was aware of the allegations against him and after hearing the petitioner, order dated 5th March, 2012 was passed.

11. We do not find any merit in the present writ petition and the same is dismissed. No costs.

SANJIV KHANNA, J.

R.V.EASWAR, J.

MARCH 22, 2012/NA