IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 3303 OF 1988

M/s. Mina of India a proprietary concern of Rasiklal V. Vora, having his office at 207/8, Chetan Hingwala Lane, Ghatkopar (E), Bombay-400 077	}	Petitioner

versus

1. Union of India Ministry of Law Justice and Company Affairs, Aayakar Bhavan Annex, New Marine Line, Bombay-400 020 2. The Collector of Customs 3. The Asstt. Collector of Customs Both, Respondent Nos. 2 and 3, having their office at New Customs House, Ballard Estate, Bombay-400 038	}	Respondents

Ms. Rekha P. Safari for the petitioner.

Mr. Pradeep S. Jetly for the respondents.

CORAM :- S. C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.

Reserved on 9th January, 2018.
Pronounced on 4th May, 2018.

JUDGMENT :- (Per S. C. Dharmadhikari, J.)

1. This petition under Article 226 of the Constitution of India challenges the inaction of the authorities in not allowing clearance of certain imported goods, details of which are mentioned at Exhibits "B-1" to "B-3". The petitioner complains that though it is ready and willing to pay all applicable dues, the consignments are not allowed to be cleared nor are respondent nos. 1 to 3 issuing the detention certificate.

2. The writ petition proceeds on the footing that the petitioner, in the course of their business for using lining material in hand bags, brief cases, jewellery boxes, placed an order with a foreign supplier, namely, M/s. Dong Jin Textile Company, Seoul, Korea for total import of 15000 meters of lining material. This material was supplied under the cover of three invoices dated 24th May, 1988. It was certified on the invoices, according to the petitioner, that the goods are of South Korean Origin. The goods arrived at Bombay Port in July, 1988. Three bills of entry, all dated 20th July, 1988, were filed seeking clearance of the imported goods for home consumption. There is a verbal refusal from the officers to assess the three bills of entry on the ground that the imported consignments are similar to the one imported by another importer M/s. Lunar International and the respondents suspected

these consignments as well. The goods were examined and they were found to be not lining material, but they were "Nylon Flocked Member Tricot Fabrics". There were certain discrepancies in the net weight and length of the goods imported. Exhibit 'C' is a copy of the inspection report in respect of the earlier liming material. Even the test report of the Deputy Chief Chemist with regard to the consignments of M/s. Lunar International does not suggest that the goods are not lining material. The petitioner complains that this is a stereotype inspection and test and therefore, it is nothing but an excuse for not clearing the consignments.

3. In paragraphs 7 and 8 of the writ petition, the petitioner states as under:-

> "7. The Petitioners state that against export of leather and leather goods imports of various materials falling under Column 4 Appendix 17 Group 'D' are permitted against REP Licences dealing with export product leather and leather goods. The Petitioners state that by Public Notice No. 140 dated 29.12.1986, the Respondents have specifically permitted the import of synthetic lining materials against various sub-items of Group D. Hereto annexed and marked **Exhibit 'E'** is a copy of the said Public Notice dated 29.12.1986. The Petitioners state that against REP Licences issued under Group D of Appendix 17 imports of Lining materials is permissible. The Petitioners state that transfer of REP Licence is freely permissible under para 226 of AM 85-88 Policy and the Petitioners have acquired the referred REP Licence as Transferees thereof.
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> 8. The Petitioner states that Lining material is of various types with different basis of either leather fabric or cardboard which is flocked with viscose/nylon/rayon top to

give a soft, sude, plush and velvet effect. The term lining is defined in Fairchild's Directory of Textiles as under:-

> "Lining" : A generic term for fabrics used to cover inner surfaces, especially when the inner surface employs different materials than the outer surfaces. These include garment linings and those used in mechanical utilities, and serve to prevent wear on one side. Linings are produced in a wide range, and are generally smooth, just fabrics made of silk or man-made fabrics and/or mercerized cotton. They may be woven in a plain twill or satin weave. Formerly principally made with cotton Yarn and luster wool, alpaca or silk filling".

The Suede Cloth is defined in the said dictionary as under:-

> "Suede Cloth a woven of knitted fabric of wool, rayon or cotton finished to resemble sued leather. The weave is a soft filled sheeting and the fabric is finished with a close nap on one side, the heavier qualities finished on both sides. It is generally heavier than duvetyn; uses sport coats gloves, linings, dresses and cleaning cloth.

Hereto annexed and marked **Exhibit 'F'** is a xerox copy of the extract of the definition of lining and sued cloth as extracted from Fairchild's Dictionary of Textiles. Hereto annexed and marked **Exhibit 'G'** is an extract of the definition of lining and sude from Encyclopedia of Textiles setting out the process of Flocking of fabrics, leather, Cardboard etc., to obtain plush, sued and velvet effect."

4. Thus, the petitioner relies upon Stand Handbook of Textiles and earlier test reports to urge that the technical phrase "Nylon Flocks" on base knitted fabrics of man-made cellulosic filament yarn is nothing but lining material. There is a justification provided in para 10 based on the opinion of the Council for Leather Exports. Then, reliance is placed upon an interim order passed in Writ Petition No. 256 of 1988 in the case of M/s. *Ashish Lalitkumar Ravani.* Finally, what the petitioner urges is that

when such goods/consignments arrived and the respondents refused clearance, Writ Petition No. 2457 of 1988 was filed. Surprisingly, that writ petition was withdrawn by the petitioner. The justification for such withdrawal is that the respondents would consider the matter only after examining the goods. Subsequently, the goods were examined and the respondents duly endorsed the report on the said bills of entry and also obtained test records from the Deputy Chief Chemist of the Customs House. The petitioner personally requested the respondents to release the goods after such test and report. However, there was no response and the consignments were lying at the Port, due to which, the petitioner has been put to heavy financial loss by way of demurrage. The goods were also open for theft, pilferage and damage. That is how the present petition has been filed and in the grounds, it is stated that the refusal is thoroughly illegal, arbitrary and without any basis or justification in law.

5. An affidavit has been filed in this petition in reply by the Joint Commissioner of Customs and it is stated that there is a power if there is suspicion of mis-declaration of the imported goods. It is stated that the three consignments of fabrics, each containing 5000 meters were declared as lining material. The import of goods/fabric was restricted as per the provisions of

Import Export Policy 1985-88. The Central Government had framed a policy of encouraging the export of leather goods, according to which, exporters of leather goods were entitled to obtain import licences for replenishment of input requirements for export products i.e. leather goods. The import licences were issued to the importers for import of the items permitted by the import licences. However, when the goods, in this case, arrived, the import documents were presented. On presentation, an order for first check examination of the goods was passed to ascertain the description and nature of the goods and to forward a sample of the goods for analytical test. The petitioner allowed the goods to be checked before the proper officer in Docks, where the goods were lying with the Custodian. The examining officer found certain discrepancies in the description and contents of the goods. The goods were found to be Nylon Flocked Fabric, which was not permitted to be imported by the said licence. Thus, this is a modus operandi on the part of the unscrupulous importers to illegally import high quality fabric to be used in garment industry and divert them in the local market to reap huge profit at the cost of Government exchequer. In this case also, the import goods were not used in the leather industry. That is why the respondent suspected the involvement of the petitioner in such activities. He has a reasonable doubt and that is how the consignments were not allowed to be cleared. It is stated that if the import by the petitioner was bonafide and genuine, the petitioner would have exhausted all legal remedies. The instant petition is pre-mature because the goods have not been allowed to be completely tested and examined. The first check examination itself raised the serious doubt. Reliance is placed on the findings in the first test report to the effect that there are serious discrepancies. The ascertained goods were found to be Nylon Flocked Bomber Tricit in the case of earlier report of lining material. In the invoices, the goods were declared as Art Solk Fur cloth.

6. To our mind, when such is the finding reached by the respondents on examination of the previous import material and the acts indulged in by the similar importers, then, this is not a case where we can agree with the petitioner's counsel that the refusal is ex-facie illegal, arbitrary and without any justification or legal basis. We find that the petitioner withdrew the earlier petition unconditionally. We find that the petitioner allowed the inspection of the goods without any protest. We find that the goods were sent for first check examination and in the presence of the petitioner. All these activities were carried out in the Docks. In these circumstances, it is difficult to agree with

Ms.Safari appearing for the petitioner that this writ petition seeks a relief of release of the imported consignments and which release should be directed in the given facts and circumstances of the case.

7. On the other hand, we agree with Mr. Jetly appearing for the respondents that this is not a fit case for interference in writ jurisdiction, particularly after a factual conclusion reached by the authorities on inspection, examination and test of the imported material and the serious discrepancies noted as above.

8. As a result of the above discussion, we do not find any merit in this writ petition. It is dismissed. Rule is discharged. There would be no order as to costs.

(SMT. BHARATI H. DANGRE, J.) **(S.C.DHARMADHIKARI, J.)**