Delhi High Court
Jama Corporation P. Ltd. vs Union Of India (Uoi) And Ors. on 1 October, 2003
Equivalent citations: 2004 IAD Delhi 132, 107 (2003) DLT 684
Author: B D Ahmed
Bench: B D Ahmed
JUDGMENT

Badar Durrez Ahmed, J.

1. Rule. With the consent of the parties, the matter is taken up for final disposal.

2. The petitioner aggrieved by the letter dated 23.6.2003 whereby it has been informed by the Ministry of Environment and Forest that the petitioner's request of import of Caiman Crocodilus Fususskin from USA cannot be granted. The petitioner intended to import tanned skin of Caiman Crocodilus Fuscus from the USA. This species of crocodile is found in South America. It is not found in India. The petitioner obtained a permit from the Convention of International Trade in Endangered Species of Wild Fauna and Flora (CITES) which is valid up to 17.10.2003. This permit is necessary for the export/re-export of, inter alia, tanned skin of Caiman Crocodilus Fuscus from USA.

3. The petitioner submits that under the export and import policy for 2002-2007, the import of tanned skin of Caiman Crocodilus Fuscus does not require any license and is free from any condition with regard to obtaining any no objection from the Wild Life Authorities under the Wild Life (Protection) Act, 1972 (hereinafter referred to as the said Act). Learned Counsel for the petitioner has referred to Section VIII, Chapter 41 of the ITC(HS) Classification of Export and Import Items under the Exim Policy 2002-2007. The Heading of Chapter 41 is "Raw Hides and Skins (other than Fur Skins) and Leather". It is the contention of the learned Counsel for the petitioner that the product that they have imported falls under Exim Code 4106 40 00 which is indicated as "free" under the policy and no condition to the policy is attached. In other words, the import of the product which the petitioner has made does not require an import license nor is there any condition attached to it. Learned Counsel for the petitioner contrasted the Exim Code 41064000 with Exim Code 4103 20 00 which pertains to Raw Hides and Skins of reptiles. Here also imports are free and no import license is required. However/a condition to the policy is prescribed and that condition is "Imports subject to Wild Life (Protection) Act, 1972 and CITES". The contention of the learned Counsel for the petitioner is that if the petitioner imported Raw Hides Skin of the very same reptile i.e. Caiman Crocodilus Fuscus it would have to comply with the requirement of the Wild Life (Protection) Act, 1972 as well as CITES. However, the product in question is "tanned skin" of the said reptile which is allowed to be imported free and without any condition attached to it. Accordingly the short submission of learned Counsel for the petitioner is that the impugned letter is contrary to the Exim Policy and that the endorsement in the bill of entry requiring the petitioner to get a "No Objection Certificate" from the Wild Life Authorities is also contrary to the Exim Policy.

4. Mr. Navin Chawla, learned Counsel appearing on behalf of the respondents made a two-fold submission. In the first instance, he submitted that Chapter 41 would not govern the import in question. In fact, it would be Chapter 1 of Section 1 which would govern the import. I am unable to agree with this proposition at the outset. The said Chapter 1 relates to "live animals" and the Chapter note also states that "this Chapter covers all live animals" except those which are mentioned in Clauses a, b and c. The petitioner has imported tanned skin of Caiman Crocodilus Fuscus which cannot categorised as live animals by any stretch of imagination. The learned Counsel for the respondent sought to justify his arguments relying upon the Import Licensing Notes at the end of Chapter 1 and, in particular, Note thereto which reads as under:

"(1) An application for grant of a license for import of Animals, Birds and Reptiles (including their parts and products) may be made in the form given in Appendix-8 of the Handbook of Procedures Vol. 1, to the Director General of Foreign Trade along with the recommendation of the Chief Wild Life Warden or the State concerned."

Learned Counsel submitted that since the words "including their parts and products" are mentioned, therefore, it would also include skins. This submission is not tenable because the Import Licensing Notes cannot extend the scope of specific entries of the Exim Codes in the main body of the provisions. The first requirement is that the animal must be a live. This is not the case here. Therefore, this Import Licensing Note cannot be pressed into service to include the imports in question within Chapter 1.

5. The second contention of the learned Counsel for the respondents and which requires some consideration is that even if the import is governed by Chapter 41 and in particular Exim Code 41064000, the import would still be subject to Import Licensing Note appended at the end of Chapter 41 which reads as under:

"Import Licensing Notes:

(1) Import of Wild Animals (including their parts and products) as defined in the Wild Life (Protection) Act, 1972 is prohibited."

According to the learned Counsel for the respondent, this would clearly demonstrate that even if the import of tanned skin of Caiman Crocodilus Fuscus is indicated in the policy as "free", it would still be prohibited by virtue of the Wild Life (Protection) Act, 1972. He submitted that the import policy made it clear that insofar as the imports were concerned, no license was required. However, this does not mean that the provisions of the Wild Life (Protection) Act, 1972 could be over-ridden. In this regard, it is important to examine the exact meaning of the expression "import of wild animals" and in particular the meaning of "wild animals" which has been defined in Section 2(36) of the said Act as under:

"(36) 'wild animal' means any animal specified in Schedules I to IV and found wild in nature;"

The only entry with regard to crocodile is found in Schedule I Part II Item 1-D which is as under:

"1-D, Crocodiles (including the Estuarine or salt water crocodile) Crocodilus porosus and Crocodilus palustris)"

6. There were some debate as to whether the item in question i.e. Caiman Crocodilus Fuscus could be included in this category of crocodiles. While learned Counsel for the petitioner submitted that this entry did not include all crocodiles but only those crocodiles which are specifically mentioned therein i.e. Crocodilus porosus and crocodilus palustris. Learned Counsel for the respondent, however, submitted that preceding the said specific entries, an inclusive definition has been given i.e.

"including the Estuarine or salt water crocodile"

As per the Book of Indian Reptiles issued by the Bombay Natural History Society which was placed before this Court by learned Counsel for the respondent, the species known as Crocodilus Porosus is an Estuarine or salt water crocodile whereas the species known as crocodilus palustris is a fresh water crocodile. These two kinds of crocodiles are found in India. There is a third reptile from the crocodile family known as Gharial (Gavialis Gangeticus) which is also found in India. This kind is also specifically mentioned in Item 2 of Part II or Schedule-I to the said Act. The Caiman Crocodile which is sought to be imported is not a native of India. Considering the fact that the two species are specifically mentioned, it becomes clear that the expression "crocodiles" appearing in Item 1-D relates specifically to these two species only. The inclusive definition only clarifies that the expression "Crocodiles" relates not just to fresh water crocodiles but also salt water crocodiles which have also been subsequently specified by name, i.e., Crocodilus Porosus. As such the item that is sought to be imported would not be a "wild animal" under the Wild Life (Protection) Act, 1972. Therefore, the Import Licensing Note would not apply to the import in question. That being the case one would only have to go and read Exim Code 41064000 to ascertain the import policy requirement. For the Exim Code 4106 40 00 no import license would be required and that there is also no condition attached to the policy.

7. In this view of the matter, there can be no objection to the import of the said items from the angle of the Wild Life (Protection) Act, 1972. Before parting with this case, it is made clear that no view of this Court has been expressed in respect of the provisions of Section 44 of the Wild Life (Protection) Act, 1972. That issue has not arisen in the present case. However, learned Counsel for the respondent did submit that dealing in such articles would ipso facto require the license and that the requirement of Section 44 would have to be complied with, if applicable. These issues do not arise for determination in the present petition. Here, the petitioner was being compelled to obtain a "No Objection Certificate" from the Wild Life Authorities as a condition precedent to clearance of the goods in question by the Customs Authorities. I have held that no "NOC" is required under the Wild Life (Protection) Act, 1972 and as such the goods be released by the Customs Authorities subject to the petitioner complying with all other applicable conditions under the Customs Act.

Accordingly, the writ petition is disposed of. No order as to costs.

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