

ANANT B. TIMBODIA

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v.

UNION OF INDIA AND ORS.

FEBRUARY 26, 1992

[M.H. KANIA, CJ., V. RAMASWAMI AND N.M. KASLIWAL, JJ.]

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*Import-Export Policy, April 1990—March, 1993:*

Item 169 of List 8, Appendix 6, Part I and Para 167 of Chapter XIII—Cloves—Classification of—Whether cloves imported by appellant fell within Item 169 "Drugs/Drug Intermediate not elsewhere specified."

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The appellant obtained, by transfer, an Import Licence for the import of admissible Items as per Para 220 (2), (3), (4) and (6) of the Import Policy 1990-93 Vol.I and placed an order on a foreign firm for the supply of cloves No. 1 quality. On arrival of the goods in the Indian Port, the appellant filed Bill of Entry for the clearance of the goods for home consumption, and claimed clearance of the goods against the additional licence on the ground that the cloves were covered under Item 169 of Appendix 6, List 8, Part I of the Import and Export Policy, being Drugs/Drug intermediate not elsewhere specified." The Department relying on Para 167, which dealt with the import of spices, took the view that the cloves could be imported only against specific licence relating to cloves. Hence the appellant filed a writ petition in the High Court for a direction to the respondent to clear the goods against the Bill of Entry filed by the appellant.

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The High Court held that cloves could not fall within the expression "Drugs/Drug intermediate not elsewhere specified" and the import of the cloves without specific licence was not permissible, and that the licence relied upon by the appellant was not valid for the import of cloves.

In the appeal before this Court, it was contended on behalf of the appellant-importer that in popular sense and trade parlance, clove was also used as drug intermediate, and that in the Import Policies of 1982-83 to 1985-86 cloves were specified as crude drug and the cloves and clove oil were used for treatment of dyspepsia, flatulence, etc., and tooth problems and, therefore, the High Court committed an error in holding that clove

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**A** was not a Drug/Drug intermediate, and that it did not fall within Item 169.

Dismissing the appeal of the Importer, this Court,

**HELD :** 1.1 Para 167 under Chapter XIII of the Import Policy of April 1990-93 clearly provides the heading Import of Spices and under this heading of spices it further makes a mention that import of Cloves, Cinnamon/Cassia, Nutmeg and Mace will be allowed against licences. Thus, it is clear beyond any doubt that cloves have been included under the heading Spices and the import of cloves is only permissible against specific licences obtained in the manner provided in Para 167. In the face of this provision, dealing with the import of spices, which specifically includes cloves, the general provision of Item 169 mentioning Drugs/Drug intermediates cannot be applied. [1002D-E]

1.2 In the instant case the appellant had obtained the licence in November, 1990 and has imported the cloves in May, 1991 and as such the import of cloves in question, shall be governed by the provisions contained in the Import Policy of April, 1990-93, and not by any meaning given to cloves in any earlier Policy. Therefore, when para 167 provides for obtaining specific licence for cloves, there is no necessity of finding its meaning from earlier Policies or its use as medicine. There is a clear provision under Para 167 as regards import of spices and it would govern the import of cloves. That apart, the High Court was right in holding that in the common parlance as well as in trade and commerce, clove is treated as spice and not drug. It is a matter of common knowledge that the cloves are sold in a 'Kirana' shop and not in the shop of a chemist or druggist.

[1002C, F-G]

**F** CIVIL APPELLATE JURISDICTION: Civil Appeal No. 916 of 1992.

From the Judgment and Order dated 18.6.1991 of the Bombay High Court in W.P.No. 1914 of 1991.

**G** Harish N.Salve, Rajiv K.Garg and N.D. Garg for the Appellant.

K.T.S. Tulsi, Addl. Solicitor General, A.Subba Rao, P.Parmeswaran and A.D.N. Rao for the Respondents.

**H** The Judgment of the Court was delivered by

**KASLIWAL, J.** Special leave granted.

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This appeal has been filed against the judgment of the Bombay High Court dated 18.6.1991. The short controversy raised in the present case is whether the cloves imported by the appellant fall within Item 169 in List 8 of Appendix 6 or fall within Paragraph 167 of Chapter XIII of the Import and Export Policy April 1990-March 1993.

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Brief facts of the case are that the appellant obtained by transfer an Import Licence No. 3412179 dated 29th November, 1990 for Rs. 16,10,700 for the import of admissible Items as per Para 220 (2) (3) (4) & (6) of the Import Policy 1990-93 Vol. I. After acquisition of the aforesaid additional licence, the appellant placed an order for the supply of about 200 bags of Madagascar cloves No. 1 quality to a firm of Singapore. The appellant opened a letter of credit dated 6.5.1991 in favour of the foreign supplier. On receipt of the letter of credit the foreign supplier shipped the above mentioned goods in favour of the appellant. On arrival of the goods at Bombay Port, the appellant filed Bill of Entry for the clearance of the goods for home consumption on 30th May, 1991. The appellant claimed clearance of the goods against the additional licence on the ground that the cloves were covered under Item 169 of Appendix 6, List 8, Part-I of the Import and Export Policy being "Drugs/Drug intermediate not elsewhere specified." The Department relied on Para 167 which dealt with the import of spices and took the stand that the cloves could be imported only against specific licence relating to cloves.

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The appellant in the above circumstances filed a Writ Petition in the High Court of Bombay seeking a mandamus against the respondent to clear the goods against the Bill of Entry filed by the appellant. The High Court held that the cloves cannot fall within the expression "Drugs/Drug intermediate not elsewhere specified" and the import of the cloves without specific licence was not permissible. It was thus held that the action of the Customs Authorities in not permitting clearance cannot be faulted and the licence relied upon by the appellant was not valid for the import of cloves.

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It was contended by Mr. Harish Salve, Learned Counsel for the appellant that though the use of clove as a spice is not in much dispute, but at the same time it cannot be disputed that clove is a Drug/Drug intermediate. It was submitted that in popular sense and trade parlance, clove is also used as drug intermediate and that being so the appellant was

A entitled to import the cloves against the additional licence under Para 220 of the Policy. It was also submitted that in the Import Policies of 1982-83 to 1985-86 cloves were specified as crude drugs. It was thus submitted that when clove was considered as crude drug, there was no justification now to hold that it did not fall within Item 169 which provided for Drug/Drug intermediates. It was further argued that cloves are used for treatment of dyspepsia and flatulence. It is also used to relieve nausea and vomiting. Clove oil is famous for medicinal use and specially for tooth problems. It was also argued that in the Indian Materia Medica by A.K.Nadkarni the use of the cloves has been stated as follows :-

C "Uses - Cloves (unopened flower-buds) are generally used as spice in curry foods and condiments. Medicinally they are used to correct griping caused by purgatives, relieve flatulence, various forms of gastric irritability, colic, dyspepsia, and to increase the flow of saliva. Combined with other spices and rock-salt clove is given to relieve colic, indigestion and vomiting and to many other uses."

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It was submitted that in the Indian Pharmaceutical Codex issued by the Council of Scientific & Industrial Research, New Delhi the Action and Uses of cloves have been stated as under :-

E "Action and Uses — Clove is one of the most stimulant of aromatics. It is carminative and is used in treatment of flatulence and dyspepsia. It is sometimes administered in the form of powder or an infusion to relieve nausea and vomiting, correct flatulence and excite languid digestion."

F It was thus argued that the High Court committed an error in holding that clove was not a Drug/Drug intermediate.

G On the other hand, it was submitted by Mr. Tulsi, Learned Additional Solicitor General that Para 167 of the Policy clearly provided that import of cloves could be allowed only against licences and there was no question of applying Item 169 of List 8 Appendix 6 which provided for Drugs/Drug intermediate not elsewhere specified. It was also submitted that in the common parlance as well as in trade and commerce, the cloves are always considered as spice and not as a drug or drug intermediate. It was submitted that the cloves are sold as spice in a 'Kirana' shop and not as drug in a chemist shop.

In order to appreciate the controversy raised before us it would be necessary to reproduce Para 167 contained in Chapter XIII and Item 169 appearing in Part I of List 8, Appendix 6 of the Import & Export Policy, 1990-93 Vol. I:

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"Import of Spices:

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167. (1) Import of (1) Cloves (2) Cinnamon/Cassia (3) Nutmeg and (4) Mace will be allowed against licences. Such licences may be granted to those who imported these items during any of the financial years from 1983-84 to the preceding licensing year. Import licences will be issued on the basis of the best year's imports of an item from 1983-84 to the preceding licensing year. The percentage entitlement as well as minimum value of licence will be as notified by the Chief Controller of Imports & Exports. From the licensing year 1991-92, applicants will be required to furnish evidence of exports of Indian spices, during the preceding licensing year, for a value equal to the value of the import licence granted during the preceding licensing year. Only exports of (1) Cardamom (small), (2) all Spices/spice products in approved consumer packs of 450 gms. or less except spice oils and oleoresins and saffron (3) Herbal spices such as rosemary, thyme, terragon, sage, etc. (4) Vanilla (5) Black cumin, (6) Star anise, (7) Kokum, (8) Garlic, (9) Cardamom (large), (10) Bishopsweed, (11) Caraway and (12) Cumin seed, will be taken into account for the above purpose. Items may be added or deleted by the Chief Controller of Imports & Exports as and when considered necessary in public interest.

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(2) Exports referred to in sub-paragraph (1) above should be direct exports by the applicant in his own name with the export proceeds i.e. the foreign exchange realisation in his own name, or exports through the Consortium of Spices Exporters, membership of which is to be confined only to dealers of spices who want to avail of the facility for exports through the Consortium. Documents required to be furnished alongwith the application for grant of licences for spices shall be as provided in sub-paragraph 166(6) above.

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(3) Actual users who have no past imports will also be eligible

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A for licence on the recommendation of the sponsoring authority and approval by the Headquarters Supplementary Licensing Committee.

B (4) Applications for import of spices are to be made to the licensing authority concerned."

Item 169 in Part I of List 8, Appendix 6 :-

"Drugs/Drug intermediates not elsewhere specified."

C In the present case we are concerned with the Import Policy of 1990-93 and not any earlier Policy. The appellant had obtained the licence on 29th November, 1990 and has imported the cloves in May, 1991 and as such the import of cloves in question shall be governed by the provisions contained in the Import Policy of April 1990-93, and not by any meaning

D given to cloves in any earlier Policy. It cannot be disputed that the Government has power to modify or change its Import and Export Policy. Para 167 under Chapter XIII of the present Policy clearly provides the heading Import of Spices and under this heading of spices it further makes a mention that import of cloves, Cinnamon/Cassia, Nutmeg and Mace will be allowed against licences. Thus, it is clear beyond any doubt that cloves

E have been included under the heading spices and the import of cloves is only permissible against specific licences obtained in the manner provided in Para 167. In face of the above provision dealing with the import of spices which specifically includes cloves, the general provision of Item 169 mentioning Drugs/Drug intermediates cannot be applied. When Para 167

F provides for obtaining specific licence for cloves, there is no necessity of finding its meaning from earlier Policies or its use as medicine. As regards import of spices, there is a clear provision under Para 167 and it would govern the import of cloves. That apart we are in agreement with the view taken by the High Court that in the common parlance as well as in trade and commerce, clove is treated as spice and not drug. It is a matter of

G common knowledge that the cloves are sold in a 'Kirana' shop and not in the shop of a chemist or druggist. Thus, we find no error in the view taken by the High Court and this appeal having no force is dismissed with no order as to costs.