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

\+ LPA 658/2009

JAIN EXPORTS PVT LTD .....Appellant
Through: Mr. Rajesh Rawal, Adv.

versus

UNION OF INDIA & ORS .....Respondents
Through: Mr. Vardhman Kaushik, Adv. for Mr. Nishant Gautam, CGSC with Ms. Theresa Shaji and Ms. Kavya Shukla, Advs.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT (ORAL)

% **18.03.2026**

C. HARI SHANKAR, J.

1. The appellant imported empty oxygen cylinders, under Bills of Entry which declared them to be "anti seamless steel cylinders for medical oxygen gas", in December 1981. The imports were effected under an Additional Import Licence issued to the appellant, under para 186(8) of the Export-Import Policy 1981-1982[1], which read thus:

> "(8) Additional Licences will also be valid for import of spares of the items falling under following Heading Nos. of Schedule I to the Imports (Control) Order, 1955:-
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> | | | |
> |---|---|---|
> | 84.12 | 84.51 | 85.18 |
> | 84.15 | 84.52 | 85.19 |
> | 84.22 | 84.53 | 85.20 |
> | 84.24 | 84.54 | 85.23 |
> | 84.25 | 85.06 | 85.24 |

[1] "the EXIM Policy" hereinafter

84.32	85.07	87.01
84.33	85.08	87.02
84.35	85.09	87.03
84.41	85.12	Chapter 90
84.47	85.15	Chapter 91
		Chapter 92”

2. The imported oxygen cylinders were cleared by the customs authorities on 27 February 1982.

3. On 29 April 1985, the appellant was issued a show cause notice under Section 4(l)[2] read with Section 4(i)[3] of the Imports and Exports

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[2] **4(l). Giving of opportunity to the owner of goods, etc.—**
No order of adjudication of confiscation or imposing a penalty shall be made unless the owner of the goods, materials, conveyance or animal, or other person concerned, is given a notice in writing—

(i) informing him of the grounds on which it is proposed to confiscate such goods, materials, conveyance or animal or to impose a penalty;
(ii) giving him a reasonable opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the confiscation or imposition of penalty mentioned therein, and, if he so desires, of being heard in the matter.

[3] **4(i). Liability to penalty**.—
(1) Any person who,—
(a) in relation to any goods or materials which have been imported under any licence or letter of authority, uses or utilises such goods or materials otherwise than in accordance with the conditions of such licence or letter of authority; or
(b) being a person to whom any imported goods or materials have been delivered by a recognised agency, uses or utilises such goods or materials or causes them to be used or utilised, for any purpose other than the purpose for which they were delivered to him; or
(c) having made a declaration for the purpose of obtaining—
(i) a licence or letter of authority to import any goods or materials, or
(ii) any amendment of such licence or letter of authority, or
(iii) allotment of any imported goods or materials,
is found to have made in such declaration, any statement which is incorrect or false in material particulars; or
(d) acquires, sells or otherwise parts with, or agrees to acquire, sell or otherwise part with, any imported goods or materials in contravention of the conditions of any licence or letter of authority in pursuance of which such goods or materials had been imported; or
(e) acquires, sells or otherwise parts with, or agrees to acquire, sell or otherwise part with, any imported goods or materials in contravention of the terms of any allotment made by any recognised agency; or
(f) contravenes any direction given under a control order with regard to the sale of goods or materials which have been imported under any licence or letter of authority or which have been received from, or through, a recognised agency,
shall be liable to a penalty not exceeding five times the value of the 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.

(Control) Act, 1947[4] read with Clauses 8 and 10 of the Import Export (Control) Order 1955[5]. The show cause notice alleged that the imports were contrary to para 115 of the EXIM Policy.

4. The appellant submitted its reply to the show cause notice on 13 July 1985.

5. By order dated 30 May 1991, the Additional Chief Controller of Imports and Exports[6] confirmed the allegations against the appellant and imposed a penalty of ₹10 lakhs along with debarment for the period 15 May 1991 to 31 March 1992.

6. Aggrieved thereby, the appellant approached this Court by means of WP (C) 3437/1991, in which the impugned judgment has come to be rendered. The appellant asserted, before the learned Single Judge, firstly, that the Ad. CCIE did not possess the jurisdiction to award penalty to the appellant under the Act in view of paras 323 and 324 of the Handbook of Procedures[7] 1981-1982 accompanying the EXIM Policy of that year, as the custom authorities alone could

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Explanation.—For the purposes of this section, "value" has the meaning assigned to it in sub-section (1) of Section 14 of the Customs Act, 1962 (52 of 1962).

(2) If any person abets the commission of any act or omission, which act or omission would render any person liable to a penalty under sub-section (1), or attempts to commit any act aforesaid, the person so abetting or attempting shall be liable to a penalty not exceeding five times the value of the goods or materials in respect of which such abetment or attempt has been made, or one thousand rupees, whichever is more, whether or not such goods have been confiscated or are available for confiscation.

(3) A penalty imposed under sub-section (1) or sub-section (2) may, if it is not paid, be recovered as an arrear of land revenue:

Provided that the adjudicating authority may, by order, attach any money belonging to, or owed to, the person on whom any penalty has been imposed under sub-section (1) or sub-section (2), and such attachment shall be made in the same manner in which an attachment is made by a civil court.

[4] "the IEC Act", hereinafter
[5] "IEC Order", hereinafter
[6] "Ad. CCIE", hereinafter
[7] "HBP", hereinafter

impose penalty under the said provisions; secondly, that no penalty could be awarded to the appellant in the absence of any finding of *mens rea*, and, thirdly, that the oxygen cylinders were covered by Chapter 90.18 of the IEC Order and had, therefore, been legitimately imported.

7. The learned Single Judge, therefore, addressed these individual issues in the impugned judgment, seriatim.

8. Apropos the argument that the Ad. CCIE did not possess jurisdiction to award penalty on the ground that the goods had been misdeclared, the learned Single Judge noted that para 323 itself made the importer or the owner liable to penalty under the Customs Act without prejudice to any action that could be taken under the IEC Act or under the IEC Order. The provisions regarding penalty in the IEC Act and in the Customs Act, therefore, operated in their own fields. Imposition of penalty under the Customs Act did not absolve or undo the default under the IEC Act.

9. With respect to para 324 of the HBP, the learned Single Judge holds that the paragraph applied when goods were presented for clearance and an assessment order was passed by the customs authorities. Accordingly, the contention that the authorities under the IEC Act could not impose penalty was rejected.

10. The learned Single Judge further relies, for this purpose, on Section 127[8] of the Customs Act, which specifically states that penalty under the Customs Act would not interfere with penalty under any other Act. Parallelly, notes the learned Single Judge, Section 4(j)[9] of the Act provided that confiscation/penalty under the Act would not prevent infliction of any other penalty or punishment under any other law.

11. To support his findings, the learned Single Judge places reliance on the judgment of the Supreme Court in ***Soni Vallabhdas Liladhar v. Assistant Collector of Customs, Jamnagar***[10].

12. Adverting to the argument of want of *mens rea*, the learned Single Judge holds that penalty under Section 4(i) of the IEC Act was in the nature of a civil imposition and that *mens rea* is not a necessary ingredient for levying penalty under civil statutes unless the statute itself specifies otherwise. Section 4(i) of the IEC Act does not envisage *mens rea* as one of the ingredients required to be established before penalty could be levied thereunder. Accordingly, the argument that, in the absence of any finding of *mens rea,* no penalty could be imposed under Section 4(i) of the IEC Act was also negatived. The learned Single Judge relies, for this purpose, on the judgments of the

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[8] **127. Award of confiscation or penalty by customs officers not to interfere with other punishments.—**
The award of any confiscation or penalty under this Act by an officer of customs shall not prevent the infliction of any punishment to which the person affected thereby is liable under the provisions of Chapter XVI of this Act or under any other law.

[9] **4(j). Confiscation or penalty not to interfere with other punishments.—**
No confiscation made or penalty imposed under this Act shall prevent the infliction of any other punishment to which the person affected thereby is liable under the provisions of this Act or under any other law for the time being in force.

[10] **AIR 1965 SC 481**

Supreme Court in ***Union of India v. Dharamendra Textile Processors***[11] and ***Chairman, SEBI v. Shriram Mutual Fund***[12].

13. With respect to the third submission advanced before him, i.e., that the import of the empty oxygen cylinders was in terms of the licence issued to the appellant, the learned Single Judge notes that the licence permitted import of spares for artificial respiratory systems. Under the said licence, the appellant imported 2721 empty seamless steel cylinders, under paragraphs 186(8) read with Chapter 90.18 of Schedule I to the IEC Order. As against this, the DGFT contended that anti seamless steel cylinders fell within para 115 of the EXIM Policy, for which the appellant did not have a valid licence and that, under paragraph 115(4), medical gas cylinders could be imported only to meet requirements of actual users. The learned Single Judge reproduces S. No. 90.18 of the IEC Order and para 115 of the EXIM Policy thus:

> IEC Order
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> "90.18 Mechano-therapy appliances; massage apparatus, psychological aptitude testing apparatus; artificial respiration, ozone therapy or similar apparatus; breathing appliances (including gas masks and similar respirators)."
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> EXIM Policy
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> "115(1) Applications for import of Gas Cylinders will be considered by Chief Controller of Imports and Exports, New Delhi, irrespective of the value involved. The application should be made in the form prescribed for import of Capital Goods.
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> (2) Applications will be considered, on merits, having regard to

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[11] **(2008) 13 SCC 369**
[12] **(2006) 5 SCC 361**

> indigenous production. The CCI&E, New Delhi will formulate suitable guidelines in consultation with the administrative Ministry and the technical authorities concerned so that import is allowed to the extent the demand cannot be met from the indigenous sources.
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> (3) Import of LPG cylinders will not be allowed.
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> (4) Import of medical gas cylinders will be allowed to meet the full requirement of Actual Users.
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> (5) Import of high pressure cylinders will also be allowed as spares to Actual Users in accordance with the provisions made in Chapter 9. As components, their import may be allowed to Actual Users under the procedure for supplementary Licences as provided in Chapter 6."

14. With respect to the submissions of the appellant, the learned Single Judge holds that para 186(8) of the EXIM Policy permitted import of spares for items falling within Schedule 1 of the IEC order. These included items falling under Chapter 90, which covered artificial respirators. The appellant's contention was that the gas cylinders imported by it were spares for artificial respirators.

15. The learned Single Judge notes that, as against this contention, the DGFT's stand that the cylinders imported by the appellant fell within para 115 of the EXIM Policy, which specifically dealt with oxygen cylinders, was more acceptable. The learned Single Judge notes that oxygen cylinders are bought and sold in the market as separate apparatus and equipment and could not fall within the definition of artificial respirator systems and spare parts.

16. Having thus held on each of the three issues that the appellant had raised before him against the appellant, the learned Single Judge proceeds by the impugned judgment to dismiss the writ petition.

17. Aggrieved thereby, the appellant is in appeal.

18. We have heard Mr. Rajesh Rawal, learned counsel for the appellant and Mr. Nishant Gautam, learned CGSC for the respondents.

19. Mr. Rawal submits that the gas cylinders imported by the appellant were not complete gas cylinders and that, therefore, the findings of the learned Single Judge are not sustainable. He relies, for this purpose, on para 5 of the show cause notice issued to the appellant, which reads thus:

> "5. Import of gas cylinders was covered by para 115 of the Import Policy for 1981-82 but none of the import licenses as mentioned above is seen to have been issued under the said provision. Of course, paragraph 186(8) of the Import Policy 1981-82 permitted Export Houses to import spares of the items falling under a number of heading (including Chapter 90) of schedule I to the Imports (Control) Order, 1955, as specified therein subject to the conditions stipulated. However, import of cylinder will be governed by the provision made in para 115."

20. He also refers us to the reply filed by the appellant to the show cause notice, in which it was specifically stated that the goods imported by the appellant could not be regarded as medical gas cylinders.

21. Mr. Rawal reiterates, before us, his contention raised before the learned Single Judge, that in view of para 324 of the HBP, Customs Authorities alone could decide as to whether the goods were described in accordance with the particulars in the licence issued to the importer.

He submits that the findings of the learned Single Judge in this context are incorrect and that unless the Customs Authorities were to arrive at a decision that the imports effected by the appellant were contrary to the licence issued to it, the authorities under the IEC Act could not proceed to levy penalty on the appellant under Section 4(i) thereof.

22. Mr. Rawal further submits that, as the goods were cleared by the Customs Authorities, as being in accordance with the declaration contained in the Bills of Entry filed by the appellant, the authorities under the IEC Act were entirely in error in penalizing the appellant under Section 4(i) thereof.

23. As against this, Mr. Gautam, learned CGSC, has referred to para 26 of the impugned judgment, which reads thus :

> "26. The third issue pertains to merits and whether empty gas oxygen cylinders were imported as per the terms of the licence, i.e. spares for artificial respiratory system. The petitioner had imported 2721 pieces of empty seamless steel cylinders. These were claimed to be imported as spares for artificial respiratory system under paragraph 186(8) read with Chapter 90.18 of Schedule 1 to the Order. As per the respondents, empty seamless steel cylinders fall under paragraph 115 of the Import Policy for 1981-82 for which the petitioners did not have a valid licence and in terms of paragraph 115(4) import of medical gas cylinders was permitted and allowed to meet the full requirements of the actual users. Serial No. 90.18 of the Import (Control) Order, 1950 reads as under :
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> > "90.18 Mechano-therapy appliances; massage apparatus, psychological aptitude testing apparatus; artificial respiration, ozone therapy or similar apparatus; breathing appliances (including gas masks and similar respirators)."

24. Having heard learned counsel for both sides, we are of the opinion that there is no error whatsoever in the impugned order of the

learned Single Judge as would invite interference in accordance with the jurisdiction vested by us under the Letters Patent.

25. Apropos the jurisdiction of the authorities under the IEC Act, to levy penalty on the appellant, we do not find para 324 of the HBP to operate as an embargo against such imposition. Para 324 deals with clearance of goods and assessment of duty which is axiomatically the jurisdiction of the Custom Authorities and, therefore, envisages a situation in which the goods are presented for assessment and the Customs Authorities are required to decide where the goods are in accordance with the licence issued and the duty, if any, which would be chargeable thereon.

26. Para 323 of the HBP clearly stipulates that import of goods without a valid licence is unauthorised and renders the importer liable to punishment under the Customs Act *without prejudice to any other action which may be taken in this behalf under the IEC Act and the IEC Order*. As such, the authorities under the IEC Act were well within their jurisdiction in penalizing the appellant under Section 4(i) thereof, irrespective of the penalty which could be imposed by the Customs Authorities.

27. We are also not in agreement with Mr. Rawal's contention that unless the Customs Authorities were to declare the imports effected by the appellant to be in contravention of the licence issued to it, no action for awarding penalty under Section 4(i) of the IEC Act could follow. There is no provision of law which contains any such stipulation. The learned Single Judge has correctly held that the

authorities under the IEC Act and the Customs Authorities operate within their individual jurisdictions. In fact they belong to different Ministries of the Government, with the authorities under the IEC Act being under the overall control of the Ministry of Commerce whereas the Customs Authorities operate under the Ministry of Finance.

28. We are also in agreement with the reliance by the learned Single Judge on Section 127 of the Customs Act and Section 4(j) of the IEC Act, which clearly permit imposition of penalty under both the statutes, for the same offence of illegal importation, in violation of the licence issued to the importer.

29. It is a settled principle of law that one offence may invite penalties under more than one statute. One may refer in this context to ***State of Maharashtra and Anr. v Sayyed Hassan Sayyed Subhan and Ors.***[13]

30. *Apropos* the second argument advanced by the appellant before the learned Single Judge, i.e., absent any finding of mensrea, no penalty could be awarded under Section 4(i) of the IEC Act, the learned Single Judge has correctly held relying on ***Dharamendra Textile Processors*** and ***Shriram Mutual Fund*** that in the case of civil liabilities *mensarea* is not an undesirable ingredient unless the statute itself so provides. Indeed, Mr. Rawal did not seriously argue this aspect before us either.

[13] **(2019) 18 SCC 145**

31. No exception can be taken to the findings of the learned Single Judge on the third and last issue raised before him either, which was that the import of the cylinders by the appellant was in accordance with the licence issued to it. We are in agreement with the learned Single Judge that seamless steel cylinders could not be *ipso facto* regarded as spares for respirators. The goods were not even declared by the appellant as spares for respirators and therefore, for the purposes of obtaining import duty exemption, the appellant could not take up such a stand. In fact, the clearance of the goods by the Customs Authorities operates against the appellant as it makes it clear that the Customs Authorities also treated the goods to be seamless steel gas cylinders and not spares for respirators.

32. Even if a gas cylinder may, on some rare occasion, be used in conjunction with respiratory apparatus, we are of the opinion that even in common parlance, empty gas cylinders are not understood as spares for respirators.

33. We, therefore, find no reason to interfere with the impugned judgment of the learned Single Judge.

34. The appeal is, accordingly, dismissed with no orders as to costs.

C. HARI SHANKAR, J.

OM PRAKASH SHUKLA, J.

MARCH 18, 2026/*dsn/aky/yg*