

1938

Present : Hearne J. and Wijeyewardene A.J.KARIM *v.* AHAMED LEBBE & COMPANY

134—D. C. Colombo, 5,451.

Ceylon Importation of Textiles (Quotas) Order in Council, 1934, Arts. 9 and 10—Transfer of portion of quota under licence—Allocation to transferee on goods actually imported by him—Claim by transferor—No constructive trust.

The defendant obtained for valuable consideration the right to import a portion of the quota of textile goods allocated to the plaintiff under the licence issued to him for the year 1935, and the Custom's documents for clearing the goods described the defendant as importer of that quota.

On this statement the Collector of Customs gave the defendant for the following year a certain allocation based on the actual amount of goods imported by him in 1935.

Held, that the defendant as transferee of the licence was not bound to hold the licence, to the extent of the quota transferred to him, in trust for the plaintiff.

A PPEAL from a judgment of the District Judge of Colombo.

F. A. Hayley, K.C. (with him *N. K. Choksy*), for plaintiff, appellant.

H. V. Perera, K.C. (with him *S. J. V. Chelvanayagam*), for defendants respondents.

Cur. adv. vult.

October 5, 1938. HEARNE J.—

This appeal involves a consideration, not of a disputé in regard to facts but of the significance of admitted facts.

The plaintiff received from the Principal Collector of Customs a licence to import into Ceylon from Japan, 121,510 yards of printed cotton piece-goods during the year 1935.

The yardage which traders were authorized to import under their licences had been calculated on their previous imports during any one, at their own option, of the five years 1929-1933, and the licence issued to the plaintiff had been based upon his imports during the year 1933.

One of the regulations governing the use of licences issued is that "Any licence may on application made in that behalf be transferred by the Collector to any person designated by the licensee, and the transferee shall be entitled to import the quantity specified therein exclusive of such quantity or quantities as may already have been imported by the original licensee and endorsed on the licence by the Collector".

Whether this regulation contemplated a traffic in licences as merchantable commodities it is unnecessary to speculate. The plaintiff certainly took advantage of its provisions. "He gave his licence (in part)" to use his own words "to others at the rate of five cents a yard for importing goods"; in particular he transferred for valuable consideration to the defendants the right or benefit he held under his licence to the extent of 50,000 yards of cotton fabrics or nearly 50 per cent. of his quota.

It was not anticipated at the time that the Principal Collector would vary the method of estimating the quota to which each individual trader would be entitled and those who had chosen their peak year as their basic year were no doubt congratulating themselves. The Collector, however, decided to relate the yardage covered by licences to be issued in respect of the year 1936, not as previously to importations during a selected year but to the estimated probable requirements of traders during 1936 as indicated by their importations during the previous year. It is this decision that brought the plaintiff and the defendants into conflict.

In 1935 the defendants under the plaintiff's licence "cleared" as they claim in their answer "50,000 yards of their goods which were lying in the Customs". In the official view this is not strictly correct. In respect of 23,130 yards the clearance was effected by the defendants themselves while in respect of 26,870 yards the Customs duty was passed in the name of the plaintiff. The Customs Department regarded the defendants as being the importers of the 23,130 yards cleared by them and the plaintiff of the 26,870 yards cleared by him. When, therefore, the defendants included the former in the return made to the Collector of their imports during 1935, they not only acted correctly but they supplied the Collector with information which was expressly required by him for the purpose of making allocations for 1936.

In these circumstances the plea of the plaintiff that a cause of action had accrued to him by reason of breach of contract or of wrongful representation is one which ignores the plain facts of the case.

On appeal this plea was properly abandoned and the plaintiff's case was made to rest on a "constructive trust" (paragraph 7 (c) of amended plaint). It was argued that the yardage specified in the defendants' licence for 1936 included 18,000 yards in consequence of the return made

by them of 23,130 yards imported in 1935 under the plaintiff's licence, and that the defendants, therefore, held the benefit of importing 18,000 yards to the use of the plaintiff.

In my opinion the basis adopted by the Collector for the purpose of issuing licences in 1936 makes this argument untenable. The issue of a licence to the plaintiff in 1935 did not entitle him to the issue of a licence in his favour in 1936, which would necessarily bear a relation to the licence of 1935 unless the Principal Collector so decided and this he did not do. The licences issued for the year 1936 designedly, as it appears to me, were made personal to the holders in the sense that they were definitely related to the current requirements, so far as they could be ascertained of the persons in whose favour licences were issued. Licensees were permitted to import certain quantities of cotton goods not on the basis of importations in the relatively distant past—a basis which might give individual traders a margin beyond their needs capable of conversion into easily earned money—but on the basis of their actual importations during the preceding year, whether such importations or "Customs clearances" were under their own licences or the licences of others. It follows that the licence issued to the defendants was free from any trust and in my opinion the plaintiff's action was misconceived.

I would dismiss the appeal with costs.

WIJEYWARDENE A.J.—

This is an appeal arising out of a transaction in respect of a licence issued by the Principal Collector of Customs under certain regulations made by the Governor under Articles Nos. 9 and 10 of the Ceylon Importation of Textiles (Quotas) Order in Council, 1934.

This Order in Council was passed in order to regulate the importation into Ceylon of certain textile goods from foreign countries. It came into operation on July 31, 1934; Article 9 of the order empowered the Governor to prescribe that no person shall import any regulated textiles except under a licence issued by the Principal Collector of Customs and Article 10 authorized the Governor to make the necessary regulations for carrying the order into effect. In the exercise of his powers, the Governor made certain regulations which are published in the *Government Gazette* No. 8,078 of September 11, 1934. Regulation 3 prohibits the importation into Ceylon of any regulated textiles except under a licence in conformity with the regulations. Regulation 4 provides for applications for licences to be made to the Collector of Customs on or before a date to be fixed and notified by him for each quota period. Regulation 5 enables the Collector of Customs to consider all such applications received by him and issue to the applicants approved by him licences for such quantities as may be determined by him on a basis adopted by him with the sanction of the Financial Secretary. According to Regulations Nos. 6 and 7 licences are to be issued for a definite quota period to be mentioned in the licences. Regulation No. 8 empowers the Collector to revoke any licence obtained by any person by means of any incorrect or false statement or by any misrepresentation. Regulation No. 9 requires the Collector to endorse on every licence the several quantities imported thereunder and cancel the licence when the full quantity authorized by it has been imported.

The Principal Collector of Customs issued to the plaintiff Licence No. 17 for the first half-year of 1935 and Licence No. 767 for the second half-year of 1935 under each of which the plaintiff was authorized to import 60,755 yards of printed cotton goods from Japan. The defendant himself obtained licences for 1935 to import printed cotton goods from Japan. He found that the amount allowed him by the Collector fell short of his requirements and therefore an agreement was reached between him and the plaintiff that in consideration of a payment of Rs. 2,500 to the plaintiff, the defendant should be allowed to pass through the Customs 50,000 yards of Japanese cotton goods under the plaintiff's licence. In accordance with this agreement the defendant cleared 50,000 yards under the plaintiff's licence—23,130 yards on one occasion and 26,870 yards later. The Eastern Agency Company which acts as agents for a number of importers, including the plaintiff and the defendant, presented the necessary documents for clearing these two instalments of Japanese cotton goods through the Customs. The documents with regard to the first instalment gave the defendant as the consignee and declared the consignee to be the importer of goods. The documents in respect of the second instalment gave the consignee and importer as plaintiff.

It is not suggested by the plaintiff that the defendant has acted in bad faith in respect of the documents for the first instalment of goods wherein he is described as consignee and importer. In fact the description given in these documents is in consonance with the true facts. The Customs authorities made entries in the Customs Register showing the names of the importers who cleared various consignments of goods. The data for such entries are obtained from the documents presented for clearing the goods. Accordingly the Customs Register showed the defendant as the importer of the first instalment of 23,130 yards of Japanese cotton.

It may be noted at this stage that in making the allocation of licences for the year 1935, the Collector of Customs allowed himself to be guided by the information given by the applicants in their applications showing the maximum amount of cotton goods imported by them from Japan in any one of the five years from 1929 to 1933. When he came to consider in 1935, the allocation for the year 1936, he adopted as his basis the amount of Japanese cotton goods actually imported by each applicant during the year 1935. He called upon each applicant to furnish him with a statement showing the amount of cotton goods imported by him in 1935 and checked such statement by the entries made in the Customs Register. In this statement, the defendant very correctly included the first instalment of 23,130 yards, while the plaintiff gave in his statement both the instalments as imported by him. The Collector of Customs who must have checked these statements by the entries in the Customs Register must have naturally determined his allocation to the plaintiff and the defendant for 1936 on the footing that the defendant was the importer of the first instalment of 23,130 yards. This no doubt accounts in some measure for the reduction of the plaintiff's allocation from 121,510 yards in 1935 to 91,580 yards in 1936. The plaintiff who was aggrieved by this reduction appears to have thought that he had a cause of action against the defendant as this reduction was due to the defendant clearing through the Customs in 1935 the first instalment of 23,130 yards under the plaintiff's

licence on documents showing himself to be the importer of the goods. The plaintiff thereafter filed the present action against the defendant asking *inter alia* for a decree declaring that the defendant holds for the use and benefit of the plaintiff and in trust the licences issued to him for 1936, and subsequent years to the extent of 23,130 yards for each year. The plaintiff has sought to justify this claim by pleading various alternative causes of action.

The learned Counsel who appeared for the plaintiff in appeal conceded that he could not sustain his claim for relief on the ground that the defendant has committed a breach of an agreement as pleaded in paragraph 6 of the plaint in obtaining his licence for 1936 on the footing that he was the importer of the first instalment of 23,130 yards.

It was however argued that the defendant became by virtue of the facts mentioned by me earlier a constructive trustee for the plaintiff and was therefore bound to hold the licences issued to him in trust for the plaintiff to the extent of 23,130 yards for each year. I am unable to see how any question of trust could arise in this case. The defendant obtained for a money consideration the consent of the plaintiff to clear from the Customs 23,130 yards of Japanese cotton goods under the plaintiff's licence for 1935. The defendant cleared the goods according to the agreement. The documents for clearing gave a correct description of defendant as the importer; moreover there was no agreement either express or implied that the defendant should not be described in these documents as the importer. When the Collector of Customs requested the defendant to send a statement of goods imported by him in 1935, the defendant sent a true and correct statement. On that statement as verified by his own books the Principal Collector of Customs who has authority under the regulations gave him a certain allocation for 1936. It is, no doubt, true that the plaintiff's allocation has been reduced for 1936. But such a reduction would have taken place even if plaintiff did not agree to permit the defendant to clear 23,130 yards under his licence, because the allocation given to plaintiff in 1936 would have been in any event based on the actual goods imported by him in 1936. I affirm the judgment of the learned District Judge dismissing the plaintiff's action with costs and dismiss the appeal with costs.

Appeal dismissed.
