
(1960) 02 P&H CK 0014
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 355-D of 1957

B.D. Gupta

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 22-02-1960

Acts Referred:

Constitution of India, 1950 — Article 226, 32
Sea Customs Act, 1878 — Section 182

Citation : AIR 1960 P&H 465

Hon'ble Judges : G.L. Chopra, J

Bench : Single Bench

Judgement

(1) This petition for revision is directed against an order of a Judge of the Small Causes, Delhi, dismissing the petitioner's suit on the ground that the Civil Court had no jurisdiction to hear it.

(2) Messrs. Prago Export of Jhungmanrove, Czecho Slovakia, sent a free sample parcel of sports goods consisting of archery equipment valued at Rs. 28/2/- in the beginning of 1954. As the value of the parcel was less than Rs. 250/-, the plaintiff claimed that it could be imported without an import licence. The Customs Authorities first raised certain objections: the same were met with by the petitioner, but the Customs Authorities still refused to release the goods unless an import licence was furnished. The plaintiff brought the present suit against the Union of India for recovery of Rs. 62/1/- as damages on the alleged ground that the order of the Sea Customs Authorities requiring the petitioner to furnish an import licence was malicious, illegal and against the provisions of the Act and the rules framed thereunder. The preliminary objection raised by the defendant, that the suit in its present form was not maintainable in a Civil Court, was decided against the petitioner and the suit dismissed.

(3) Admittedly, the order of the Sea Customs Authorities was made under S. 182 of the Sea Customs Act. Section 188 lays down:

"Any person deeming himself aggrieved by any decision or order passed by an

officer of Customs under this Act may, within three months from the date of such decision or order, appeal therefrom to the Chief Customs authority, or, in such cases as the Central Government directs, to any officer of Customs not inferior in rank to a Customs-collector and empowered in that behalf by name or in virtue of his office by the Central Government.

Such authority or officer may thereupon make such further enquiry and pass such order as he thinks fit confirming, altering or annulling the decision or order appealed against:

Provided that no such order in appeal shall have the effect of subjecting any person to any greater confiscation, penalty or rate of duty than has been adjudged against him in the original decision or order.

Every order passed in appeal under this section, subject to the power of revision conferred by S. 191, be final."

Section 191 provides that the Central Government may, on the application of any person aggrieved by any decision or order passed under this Act by any officer of Customs or Chief Customs-authority, and from which no appeal lies, reverse or modify such decision or order.

(4) Mr. Sohan Lal Pandhi, learned counsel for the petitioner, contends that since the petitioner had not gone in appeal against the original order made against him by the Customs-authority, as provide by S. 188, the order of the Assistant Collector could not be regarded as final against him. The argument is that it was within the option of the petitioner to avail himself of the remedy provided by the Act or to take his remedy under the common law by filing a regular suit for the recovery of damages incurred by him because of an illegal order made by the Customs-authorities.

A decision reported in the unauthorised series of the Reports of the Madras Law Journal in 71 Mad LJ (NRC) 40, is being cited in support of the contention. There, it was held that the Sea Customs Act contained no section excluding the jurisdiction of the Civil Court nor did the scheme of the Act or the language of Section 188 necessarily import such exclusion. The facts of the case or the reasoning upon which the finding is based have not been reported.

If it was meant to decide that in every matter a person aggrieved of an order made under the Sea Customs Act could question the legality of that order and seek his remedy in a Civil Court, after or without taking resort to the remedy provided to the Act, I would be in respectful disagreements with the decision. The general principle that has now been well-established is that where a statute creates a duty or imposes a liability and prescribes specific remedy in cases of neglect to perform the duty or discharge the liability, no remedy can be taken but the particular remedy prescribed by the Statute.

In *Gulabdas and Co. and Another Vs. Assistant Collector of Customs and Others*, , it is observed that if the provisions of law under which the impugned

orders have been passed are good provisions and the orders passed are within jurisdiction, whether they be right or wrong on facts, there is really no question of the infraction of a fundamental right. If a particular decision is erroneous on facts or merits, the proper remedy is by way of an appeal. This was a case under Art. 32 of the Constitution but the observations made by their Lordships are of general import and support the view that where a special right or duty is created or imposed by the provisions of a special Act, and the Act also provides the procedure or the remedy to enforce the right or the liability, it is that procedure alone that has to be followed and the jurisdiction of the Civil Court would generally be ousted.

(5) In *Secretary of State v. Mask and Co.* AIR 1940 PC 105, it was held that by Ss. 188 and 191, a precise and self-contained code of appeal is provided in regard to obligations which are created by the statute itself and it enables the appeal to be carried to the supreme head of the executive Government. Their Lordships proceeded to observe:

"It is difficult to conceive what further challenge of the order was intended to be excluded other than a challenge in the Civil Courts."

As the remedy provided by S. 188 of the Act is the particular case had been availed of, their Lordships left the question open as to whether an order of the Assistant Collector, against which no appeal was filed, would also be regarded as final and the jurisdiction of the Civil Courts in such a case would be excluded. Nevertheless, the general principle that where the statute creates a liability not existing in common law and gives also a particular remedy for enforcing it, that party must adopt the form of remedy given by the statute, was followed and adopted.

In *W. Saldanna v. Amarjit Singh* AIR 1954 Punj 73, a Division Bench of this Court in a petition under Art. 226 of the Constitution observed that the remedy of an appeal under the Sea Customs Act, which has been laid down by the statute itself, should not be by-passed merely on the ground that it is an appeal from one administrative tribunal to another and that if the law has laid down a particular procedure for redress of grievances, another remedy would not be available.

(6) I do not see any force in this petition. It is accordingly dismissed, but in view of the facts of the case the parties are left to bear their own costs.

(7) Petition dismissed.