

(2001) 12 BOM CK 0027

In the Bombay High Court

Case No : Writ Petition No. 3568 of 1987

Bhavesh Exports Pvt. Ltd.

APPELLANT

Vs

Assistant Collector of Customs

RESPONDENT

Date of Decision : 21-12-2001

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2002) 144 ELT 50

Hon'ble Judges : V.C. Daga, J; J.P. Devadhar, J

Bench : Division Bench

Advocate : U.B. Singh, P. Sacheti and A.H. Mehta, for the Appellant; R.V. Desai, R. Asokan, instructed by H.D. Rathod and K. Modi, instructed by Little and Co., for the Respondent

Judgement

V.C. Daga, J.—Heard the learned Counsel for the rival parties.

CHRONOLOGY OF EVENTS

2. The petitioners are a private limited company. The respondent Nos. 1 and 2 are the officers of the Customs Department working under the Control of respondent No. 4, the Union of India. The respondent No. 3 is a nationalised bank wholly owned and controlled by the Government of India ("Bank" for short).

3. The petition is directed against the action taken by the Assistant Collector of Customs (Central Intelligence Unit) Bombay, the respondent No. 1, directing the Bank vide his letter dated 17th March, 1983 not to allow M/s. Bharat Export Corporation, Bombay and/or M/s. Bhavesh Exports Pvt. Ltd., Bombay (the petitioners) to withdraw any amount lying in the credit of their bank account with them on the assumption that the amount lying in the account of the petitioners represents the sale proceeds of the goods imported by their alleged sister concern M/s. Bharat Export Corporation under D.E.E.C. Scheme subject to the condition that they will manufacture polyester blended yarn out of the imported fiber and re-export it. The letter further says that M/s. Bharat Export Corporation

has sold all the imported polyester fiber to various mills in Bombay and Ahmedabad without discharging import obligations incurred by them and part of the sale proceeds thereof have been deposited by them with the Bank either in their own name or in the name of their alleged sister-concern M/s. Bhavesh Exports Pvt. Ltd., the present petitioners. In the belief of the Assistant Commissioner of Customs, the respondent No. 1, the sale of polyester fiber was illegal as such the sale proceeds thereof were liable to be confiscated under the provisions of Section 121 of the Customs Act, 1962. In this view of the matter, request in the nature of direction was made to Bank not to allow the petitioners, M/s. Bhavesh Exports Pvt. Ltd. to withdraw any money lying in the credit of their bank account maintained with the said respondent No. 3 bank.

4. The respondent No. 3 bank has acted upon the said letter issued by respondent No. 1. The Bank did not allow the petitioners to withdraw any amount lying in the credit of their bank account and also prevented them from operating their bank account. On the relevant date the credit balance in the account of the petitioner company was in the sum of Rs. 3,00,385/-.

5. The above action was taken by the respondents behind back of the petitioners. They were completely unaware of the reasons for preventing them from operating bank account. The petitioners, therefore, approached the Bank and by oral enquiry tried to find out the reasons for stoppage the operation of their bank account. The petitioners also made written representation to the Bank vide their letter dated 20th January, 1984 and requested for permission to operate their bank account. However, in view of the directions of respondent No. 1, the bank refused to accept their request.

6. It appears that the petitioners kept on making approaches to respondent No. 1 from time to time and waited for quite a long period of about four years so as to give chance to respondent Nos. 1 and 2 to investigate the issue and take final action in accordance with law. The petitioners after having waited for long period of about four years again approached the Assistant Collector of Customs vide their notice dated 7th July, 1987 with a request to withdraw their directions to the bank and permit them to operate their bank account. The petitioners after waiting for some time again approached the Collector of Customs vide their letter dated 1st August, 1987 to consider their request and asserted that they have nothing to do with M/s. Bharat Export Corporation. The petitioners did not get any reply much less even one line acknowledgment to their written request. The respondent Nos. 1 and 2 did not give any response to their representations. Their representations did not yield any result. No investigation was made by the respondents. At no point of time any enquiry was made from the petitioners. The respondent No. 1 after issuing directions to respondent No. 3 vide letter dated 17th March, 1983 did not take any steps in the matter.

7. The petitioners faced with the above situation, left with no alternative, approached this Court with the present writ petition in the year 1987. After hearing the parties on a notice of motion taken out by the petitioner, this Court

was pleased to pass interim order on 5th November, 1993 reading as under :

"Pending the hearing and final disposal of the petition, the sum of Rs. 3,00,000/- which is lying in the bank account of the petitioners with Central Bank of India, Main Branch, respondent No. 3 herein, may be kept by respondent No. 3 itself in a Fixed deposit. The petitioners shall sign all the necessary documents in that connection. The petitioners, however, shall not be entitled to withdraw the amount so deposited in a Fixed Deposit account with the 3rd respondent pending further orders. The 3rd respondent shall endorse on the Fixed Deposit Receipt the condition that the amount cannot be withdrawn by the petitioners without the orders of the Court. The petitioners to furnish to respondent Nos. 1 and 2 a xerox copy of the Fixed Deposit Receipt.

No other order on the Notice of Motion.

Respondent No. 3 to act on a certified copy of the Minutes."

8. The above petition came up for hearing on 29th November, 2001, after 14 years from the date of filing of the petition, and after 18 years from the date of directions issued by respondent No. 1 to the Bank. The respondents sought time to file their returns. Consequently, the same was adjourned to 7th December/2001 so as to enable the respondents to file their return and/or affidavit-in-reply. Again this petition was on our board on 7th December, 2001. The same was adjourned from time to time at the request of respondent Nos. 1, 2 and 4 to enable them to file their return. Thus, this petition was adjourned on following dates :

29th November, 2001, 7th December, 2001, 12th December, 2001 and 19th December, 2001.

Ultimately, on 19th December, 2001, when this petition was called out for final hearing, the learned Senior Counsel Shri R.V. Desai appearing for respondent Nos. 1, 2 and 4 submitted that the record with respect to the matter in question being not traceable, the said respondents are unable to file their reply and/or return and/or affidavit-in-opposition. This Court, disturbed with the conduct and attitude of the respondents, called upon the said respondents to file an affidavit as to who was and is responsible to maintain the record of the matter in question. It is needless to mention that though an affidavit was filed disclosing the names of the officers who had held the charge of the Central Intelligence Unit, the same hardly answers the requirement of our directions issued vide our order dated 19th December, 2001.

9. Be that at it may, the petition was again adjourned to 21st December, 2001 to enable the respondents to file proper affidavit. The matter was again called out for final hearing on 21st December, 2001, however, no return was filed by the respondents to reply the allegations made in the writ petition so as to justify their action, the subject matter of challenge in the present petition. None of the allegations made in the petition are denied by respondent Nos. 1, 2 and 4. The

learned Counsel for the Bank stated before us that the bank has bona fide acted upon the directions issued by respondent No. 1. However, they are prepared to submit to the directions and/or orders of this Court. With the above state of affairs prevailing on record, this petition was taken up for final hearing.

10. The learned Counsel for the petitioners made his submission reiterating the contentions raised in the writ petition. The learned Senior Counsel appearing for respondent Nos. 1, 2 and 4 was also permitted to make his submission, but he was handicapped while making his submission for want of affidavit-in-reply.

THE ISSUE

11. The substantive issue for consideration is as under :

"Whether the action of respondent Nos. 1 and 2 in directing the Bank not to allow the petitioners to withdraw any amount lying in the credit of their bank account and not to permit them to operate their bank account is legal and valid?"

FINDINGS

12. Having heard the parties, one thing is crystal clear that there is absolutely no material on record even to suggest that the credit balance lying in the account of M/s. Bhavesh Exports Pvt. Ltd. (the petitioners) represented the sale proceeds of the goods alleged to have been sold by M/s. Bharat Export Corporation, Mumbai. It is needless to mention that a long period of 18 years was sufficient to adjudicate upon the issue sought to be raised in the letter dated 17th March, 1983 written to the Bank by respondent No. 1 herein. Till today, neither any action has been taken by the Customs Department to investigate the issue raised in the said letter nor at any rate, any material is produced on record to justify the directions issued to the Bank in this behalf.

13. The learned Senior Counsel for respondent Nos. 1, 2 and 4 sought to produce zerox copies of two orders on record without there being any affidavit in support thereof; one was the order dated 24th January, 1986 and another dated 1st July, 1985. The same could not be taken on record for want of proper affidavit. However, to satisfy our own conscience, we glanced through the said orders. None of these orders substantiate the oral contentions raised by the learned Counsel appearing for respondent Nos. 1, 2 and 4 nor do they connect the credit balance which was lying in the bank account of the petitioners with that of the sale proceeds of the goods alleged to have been imported and sold by M/s. Bharat Export Corporation, Mumbai; as suggested in the letter dated 17th March, 1983. The learned Senior Counsel appearing for the said respondents, to our query, fairly conceded that in a criminal prosecution pending against M/s. Bharat Export Corporation, Mumbai, the issue with respect to the nexus of the present petitioners with accused persons or the credit balance which was lying in their account had any connection with that of M/s. Bharat Export Corporation, Mumbai, is not a subject matter of criminal trial.

14. The petitioners have made specific allegations in the petition that the credit

balance which was lying in their bank account, was their own money and it had nothing to do with the alleged sale proceeds of the alleged goods alleged to have been imported and sold by M/s. Bharat Export Corporation. There is no denial to the said assertion made by the petitioners in this petition. The averments made by the petitioners in the petition have not been controverted by the respondents either by filing return or counter affidavit. We are, therefore, left with no alternative but to proceed on the basis that the averments made in the petition are deemed to have been admitted by respondent Nos. 1, 2 and 4, keeping in view the law laid down by the Apex Court in the case of Smt. Naseem Bano v. State of U.P. - AIR 1993 SC 2492.

15. It is needless to mention that the action initiated under letter dated 17th March, 1983 is also clearly in breach of principles of natural justice. No material is produced on record to demonstrate as to on what basis the respondent Nos. 1 and 2 entertained a belief that the credit balance, which was lying in the account of the petitioners, represented sale proceeds of the goods alleged to have been imported and sold by M/s. Bharat Export Corporation, Mumbai. The person alleged to be guilty is at least entitled to have a show cause notice and an opportunity of hearing to put forth his case. Power to determine issues affecting rights of citizens carries with it the limitation that power should be exercised in conformity with the principles of natural justice. This opportunity was denied to the petitioners,

16. The administrative order affecting rights of citizens is quasi judicial. An administrative order which involves civil consequences must be made consistently with the rule expressed in the Latin Maxim Audi Alteram Partem. It means that the decision maker should afford to a affected party an opportunity to put forth his case, the person concerned must be informed of the case against him and the evidence in support thereof, and must be given a fair opportunity to meet the case before adverse decision is taken. The purpose of the principles of natural justice is to prevent miscarriage of justice. No such opportunity has been given to the petitioners. Any arbitrary whimsical exercise of powers prejudicially affecting the rights of the parties will offend the provision of against Article 14 of the Constitution of India. In the above, backdrop, we hold that the action of respondent Nos. 1 and 2 is ab initio void being in breach of principles of natural justice and cannot be sustained in the facts of the present case in any manner; on any count whatsoever. In this view of the matter, we have no alternative but to quash and set aside the action taken by respondent Nos. 1 and 2 in pursuance of the letter dated 17th March, 1983 (Exh. "B" page 41) and to allow this petition in terms of prayer Clauses (a) to (c) with direction to the Bank to permit the petitioner to encash and/or liquidate the fixed deposit receipts representing the credit balance which was lying in the bank account of the petitioners when the impugned action was taken by respondent Nos. 1 and 2 we also declare that the petitioners shall be entitled to operate their bank account without any hindrance or obstruction from respondent Nos. 1, 2 and 4.

17. We cannot resist ourselves from observing that the action initiated by respondent No. 1 was not only arbitrary but also high handed. It cannot be justified on any count whatsoever. The said respondents, firstly, had no material in their possession to prima facie reach to the conclusion that the credit balance lying in the bank account of the petitioners belonged to M/s. Bharat Export Corporation. Secondly, no such power exist in respondent No. 1 to direct the bank to freeze the account of any citizen in the manner in which it was done, that too, without initiating any action under any of the provisions of the Customs Act. No material was in existence to believe that the credit balance lying in the bank account of the petitioners was sale proceeds of the goods alleged to have been imported and disposed of by M/s. Bharat Export Corporation, Mumbai. At any rate, no material is produced before this Court to justify the action taken by the said respondents in spite of lapse of more than 18 years. No attempt was made to initiate any proceedings during past 18 years to investigate the belief which the respondents entertained though the same was without any substance. The petitioners were deprived of their right to use their property, namely, money lying in their bank account for a long period of 18 years. They were deprived of their business liquidity. Their business must have suffered. The action taken by respondent Nos. 1 and 2 was totally unwarranted in law.

18. We are also surprised to notice the casual and unmindful attitude of respondent Nos. 1, 2 and 4 and the manner in which this petition, was defended by them. Point blank statement was made before us that the record of the case in question is not traceable; meaning thereby the same is missing. When we called upon the said respondents to file an affidavit to find out who were responsible to maintain the record so as to fix the liability, the vague affidavits were filed on record, obviously, to protect the person who may have been responsible to maintain the record in question. This reflects on the working of the Department of Customs at Mumbai. We cannot afford to ignore this state of affair. We make it clear that when the action is initiated against the citizens, it is a duty and responsibility of the persons, initiating action to support it and defend it to the best of their ability in the event of any challenge in any Court of law with whatever best material available with them. In this case no attempt was made by respondent Nos. 1, 2 and 4 to justify the action taken by them against the petitioners, though a long period of 18 years was available at their command. This obligation was shirked on the precious ground of non-availability of record. In this view of the matter, we are constrained to direct the Commissioner of Customs, Mumbai to initiate enquiry in this behalf so as to find out who was responsible to maintain record of the case in question and for the loss thereof and initiate disciplinary action against the person so as to bring him to the book with further direction to forward report thereof to this Court for record and for showing compliance of the directions issued herein.

19. Having expressed our anguish, we quash and set aside the action of respondent No. 1 and allow this petition with cost and make the rule absolute in terms of prayer Clauses (a), (b) and (c). The cost stands quantified in the sum of

Rs. 10,000/- to be paid to the petitioners, within 30 days from the date of receipt of writ of this judgment. The respondent No. 4 shall, however, be entitled to recover the cost personally from the person and/or persons who may found guilty after due enquiry as directed hereinabove. The Prothonotary and Senior Master is directed to send copy of this judgment to the Commissioner of Customs, Mumbai for record and necessary action.

C.C. expedited.