

(1986) 02 CAL CK 0026
In the Calcutta High Court
Case No : Matter No. 241 of 1970

Collector of Customs and Others

APPELLANT

Vs

Juggilal Kamlapat Udyog Limited

RESPONDENT

Date of Decision : 27-02-1986

Acts Referred:

Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 25(1), 28

Citation : (1988) 17 ECR 758 : (1987) 30 ELT 734

Hon'ble Judges : Sachi Kanta Hazari, J; Bimal Chandra Basak, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Bimal Chandra Basak, J.—This appeal is directed against a judgment and order passed by Sabyasachi Mukharji, J. (as His Lordship then was) in disposing of an application filed under Article 226 of the Constitution of India dated 2nd March, 1973. In the said writ application the petitioner challenged several show cause notices, all dated 26th March, 1970, issued by the Assistant Collector of Customs. The relevant facts of this case have been set out in the Judgment itself. However, we shall set out some of the salient facts. The Petitioner carries on business in various jute goods. In the course of its business the Petitioner sometimes exported large quantity of goods to various foreign buyers. According to the Petitioner the Petitioner entered into several contracts between 15th November, 1965 and 4th April, 1966. On 5th June, 1966, there was devaluation of the Indian Rupee. In order to lessen the hardship of the traders who had contracts with foreign buyers Notification was issued by the Central Government u/s 25(1) of the Customs Act, 1962, (hereinafter referred to as the said Act) on 11th June, 1966. Under the said notification it was provided that the goods specified in the Schedule to the said notification would be exempt from the duty of Customs leviable thereon under the 2nd Schedule of the Indian Tariff Act, 1934. It was recorded by the learned Judge that subject to certain conditions mentioned in the said notification it is undisputed that the goods in question

involved in that writ petition are the goods which were specified in the Schedule under the said notification. The conditions mentioned in the said notification are inter alia as follows :

"(A) That the goods are sought to be exported under valid "contracts" with their sales price expressed in foreign currency, entered into on or before the 5th June, 1966.

(B) That the contracts referred to in Clause (A)(i) were registered or submitted for registration with the export contracts registration committee on or before the 5th of June, 1966 or (ii) are certified by the Committee that had those contracts been so submitted they would have been accepted for registration in the normal course.

(C) That the exporter had entered into a forward contract with a Bank authorised to deal in foreign exchange in India, for the sale of foreign exchange proceeds of goods exported under the contracts referred to in Clauses (A) and (B) on or before the 5th June, 1966.

(D) That the authorised dealers in foreign exchange certified that the exporter has entered into a forward contract with him or before the 5th June, 1966 for the sale of foreign exchange representing the proceed of goods to be exported and that rate at which the forward contracts was entered into was on the basis of the rate of exchange then current.

(E) That the goods are exported on or before the 30th September, 1966."

2. We shall also be set out one show cause notice below which was challenged in this proceeding.

"No. 030A/004 Customs House, Calcutta Regd. A.D. Dated : 26-3-1970 From : The Asstt. Collector of Customs for Exports, Customs House, Calcutta. To M/s. Juggilal Kamlapat Udyog Ltd., 18, Rabindra Sarani, Calcutta. Dear Sirs, Sub : 70 Bills Per S.S. Jaladhanya Rot No. 905/66, Shipping Bills Nos. D E.D.3. 8808 and 8820, 8819, 8804, 88013,8215, dated 20-7-1966 under cover of Bonds exported free of export duty.

Examination of the documentary evidence furnished by you in terms of the Bonds and a number of your letters of explanations and contentions reveal that on 31st March, 1966 through the exchange brokers M/s. Poddar Saraogi and Co. of 22, Brabourne Road, Calcutta, you entered into a forward exchange contract Sr 12629 with the Central Bank of India covering U.S. 6000, 100/- against sight bills at the rate of Rs. 477, 75-100/- payable at New York delivery period ?31st August, to 30th September, 1966.

Your declaration in the form of Annexure "A" bearing Customs House Registration No. Jute 030A, dated 4-7-1966 shows the amount of foreign exchange sold as U.S. 3,751.28 on 31-3-1966 which appeared to be the balance outstanding on 6-6-1966 from the said forward exchange contract."

3. Apart from the question of the alleged export of excess quantity, the dispute between the Petitioner and the department is a short one. The question is whether the conditions required to be fulfilled under the said notification have been fulfilled or not and, accordingly, whether the Petitioner was entitled to the exemption of the duty or not. The admitted position further is that both the Clauses (A) and (B) have been complied with. The only contention sought to be raised by the department is that the contract with the Bank authorised to deal in foreign exchange in India was made not subsequent to the contract for the sale of the goods referred to in Clauses (A) and (B). The Petitioner contended firstly that there was a bond in the present case and that in view of the bonds the authorities concerned were not competent to issue the impugned show cause notices and that the Department can institute a suit in the appropriate court for enforcement of their rights under the Bond. This contention was, however, rejected by the Learned Single Judge. It was held that such a clause in the bond does not in any way derogate or take away the jurisdiction of the respondents which they have and the Customs Authority can proceed in respect of any amount payable under the Customs Act. It was held that the bond only gave an additional right against the Petitioner to the respondent authorities for the institution of a suit for enforcement of rights under the bond, whereas the impugned action was taken under the Act, It was further held that in a case where the Customs authorities were contending that the conditions for exemptions had not been fulfilled and as such the Petitioner was not entitled to claim exemption, the Customs authorities need not enforce their rights in respect of the bonds and as such the existence of the bonds did not disentitle them to proceed with the proceedings under the Customs Act.

4. So far as the merits of the case is concerned as already stated it was contended on behalf of the petitioner in the writ petition that the contracts under which the goods had been shipped were entered into before 5th of June, 1966. It is further the case of the Petitioner that these were forward contracts with the Bank authorities to deal with, foreign exchange proceeds of the goods exported under the contracts and such contracts had been entered into by the authorised dealer before the 5th of June, 1966. As already stated the admitted position is that both the contracts had been entered into before 5th of June, 1966. The contract with the authorised dealer was not entered into after the contract for the sale of goods but prior to that. Though a case to the contrary was sought to be raised on behalf of the petitioner to that aspect, the learned judge did not accept the same but proceeded on the basis that assuming the facts alleged in the said show cause notices be true, whether there was non-compliance of the notification and whether the respondent had any jurisdiction to proceed. It was contended on behalf of the appellant herein that there was an implied condition, namely, that the contracts for the sale of foreign exchange should be entered into subsequent to contracts of sale of the goods but prior to 5th June, 1966. The learned judge referred to the clauses in the notification dated 13th of June, 1966 and pointed out that it did not refer to any obligation of entering into contracts

subsequent to the contract for sale of goods. Reliance was placed on behalf of the department on the show cause notices which provide that the principles enunciated in Section XXVIII of the Exchange Control Manual would govern such contracts for the sale of foreign exchange and in particular reliance was placed on paragraph 4 of the Manual which is as follows :-

"Contracts forward purchase of foreign exchange may be entered into by authorised dealers with their constituents who are exporters provided satisfactory documentary evidence is produced to the authorised dealer to show that the foreign exchange offered is the expected proceeds of a shipment already made or to be made against a firm order received by the exporter."

5. The learned judge held that strictly speaking the conditions of the notification did not refer to the requirements of the Exchange Control Manual and therefore, from one point of view it could not be contended that non-fulfilment of the conditions of the notification could not be inferred by non-fulfilment of any provisions of the Exchange Control Manual. However the learned judge held that even if has not been specifically embodied or required to be followed, it might be from another view point, that is that the conditions were laid down in the background of the Exchange Control Manual and where any condition stipulated in the Manual has not been complied with that would be relevant for the purpose of ascertaining whether any condition specified in the notification has been fulfilled or not. The learned judge held on the merits that the said paragraph 4 merely stipulates that the contracts for forward purchase might be entered into by an authorised dealer provided satisfactory documentary evidence had been produced to authorised dealer. The learned judge found that in this case the authorised dealer has been satisfied and has so stated. The learned judge also found that if the authorised dealer has not been so satisfied it would have stated so. The learned judge further stated that even if the authorised dealer has not been satisfied, that is at the most an offence committed by the authorised dealer but that does not make a contract for sale of foreign exchange with the authorised dealer either had or void. Accordingly, the learned judge rejected the contention made on behalf of the appellant on the basis of paragraph 4 of the Exchange Control Manual.

6. So far as the condition of the notification is concerned, the learned judge rejected the contention of the appellant herein that the contracts which were entered into with the foreign exchange dealer must be subsequent to the contracts for the sale of goods. The learned judge rejected the said contention and held that this contract for the sale of foreign exchange had been entered into prior to 5th of June and whether it has been entered into before or after the contract for the same of goods is immaterial. Accordingly, the learned judge held that this part of the show cause notices therefore, on the undisputed facts appear to be without jurisdiction,

7. So far as the allegation regarding the excess quantity of shipment is concerned, though it was factually disputed by the petitioner in the main writ

petition, the learned judge held that he could not at this stage adjudicate same in that writ petition in view of the factual dispute and, accordingly, the learned judge did not accept such contention. The learned judge did not also accept the contention that in view of the provision of Section 28, the writ petition was barred.

8. Practically no new submission was made before us excepting what has been stated before the learned trial judge. It was submitted that clause "C of the notification meant that such agreement with the authorised dealer must be subsequent to the agreement for the sale of goods otherwise fixed price cannot be ascertained. For the reasons given by the, learned Trial Judge we reject this contention. We may point out in this context that as rightly pointed out by the learned Trial Judge, clause "C merely means that the contracts are the contracts which are referable to the categories of clauses (A) and (B). In other words the contracts in Clause (C) should be in respect of the types of contracts which are mentioned in clauses (A) and (B) of the notification. There has been no stipulation by that condition that the contracts mentioned in Clause (C) should be subsequent to contracts mentioned in clauses (A) and (B).

9. There is another aspect of this matter. The manual in our view has no application in the present case for the reasons stated by the learned judge. It is to be pointed out that the said Manual provides that "forward purchase of foreign exchange may be entered into by the authorised dealers with their constituents who are exporters provided satisfactory documentary evidence is produced to the authorised dealer to show that the foreign exchange offered is the expected proceeds of a shipment already made or to be made against a firm order received by the exporter," That also in our opinion indicates that the foreign exchange contract with the authorised dealer might take place before the formal contract was entered into with the purchaser, That is why the expression "expected proceeds" has been made. As a matter of fact, we may point out that unless the buyers know whether the notification applies to the case or not that is whether there has been such compliance with other conditions he cannot also agree with the price because that will depend on whether exemption would be obtained or not. What would be the ultimate price will depend on the question whether exemption would apply or not. In this context we may also point out that the expression used in clause "C is that the exporter had entered into a "forward contract". It is not only merely a question of entering into a contract but a "forward contract."

10, It is argued before us that this is not a case of the lack of jurisdiction and in support of that two decisions were cited before us - (1) AIR 1962 S.C. 1621 (Smt. Ujjam Bai v. State of Uttar Pradesh and Anr.) and the other Raman and Raman Ltd. Vs. The State of Madras and Another, . There is no merit in this contention. The learned judge has found that the show cause notice has been issued on the wrong interpretation of the notification and, accordingly he has rightly held that no such show cause notice could be issued. He has proceeded

on the basis of the undisputed facts on the question of interpretation of the notification,. That is why in respect of another cause of action that is alleged export of excess quantity of goods he did not enter with the same and that is also why in respect of the main point he has proceeded on the basis that the contract with the authorised dealer was entered into prior to entering into the contract for the sale of goods though an attempt was made to urge to the contrary by the petitioner. He has proceeded on the basis of admitted facts and has found that on the admitted facts interpretation of the authorities is wrong Therefore, it is a clear case of lack of jurisdiction. In any event this is a case of error of law apparent and we have no hesitation in holding to that effect.

11. It was also sought to be contended that the show cause notice is one and it cannot be bifurcated. We have failed to understand the scope of this contention. If such contention is accepted then it would mean setting aside that portion of the show cause notice also regarding which the learned judge did not interfere. We are also unable to accept the contention that because the second part has not been set aside, the first part cannot also be set aside. As rightly pointed out by the learned single judge these are two different matters and it does not prevent this court from setting aside the bad part without interfering with the other part.

12. For the aforesaid reasons there is no merit in the appeal. Accordingly, this appeal is dismissed with costs. We ought to point out that though this appeal has been filed in the year 1975 from an order of 1973 this has taken such a long time for the reasons we have also recorded in our order dated 22nd January, 1986. The respondent shall be entitled to obtain money deposited as costs directed to be deposited by us by our order. This is for the costs thrown away. In any event the appellants will pay the costs of this appeal.