

(1993) 10 MAD CK 0023

In the Madras High Court

Case No : Writ Appeal No. 1123 of 1993

Collector of Customs, Madras

APPELLANT

Vs

Madras Electro Castings P. Ltd.

RESPONDENT

Date of Decision : 13-10-1993

Acts Referred:

Cegat (Procedure) Rules, 1982 — Rule 41
Customs Act, 1962 — Section 128B, 129A, 129E

Citation : (1994) 45 ECC 99 : (1994) 71 ELT 646

Hon'ble Judges : K.A. Swami, C.J.;Somasundaram, J

Bench : Division Bench

Advocate : Mr. V.T. Gopalan, S.C.G.S.G, for the Appellant; Mr. P.S. Raman, for the Respondent

Judgement

K.A. Swami, C.J.—This appeal is preferred against the order dated 27-9-1993 passed in Writ Petition 16738 of 1993. Learned single

Judge has allowed the writ petition and issued the following directions to the Customs, Excise and Gold (Control) Appellate Tribunal :

Taking the above into consideration, I direct the release of the subject goods pending the filing of the appeal before CEGAT on the following

conditions :-

(1) The petitioner should pay the differential duty in cash to the tune of Rs. 2 lakhs.

(2) The petitioner should furnish a bank guarantee to the tune of Rs. 2 Lakhs.

(3) The petitioner is permitted to give a personal bond, as provided in the Customs Act, for the balance of the differential duty, redemption fine and penalty.

The writ petition is ordered on the above terms. There will be no order as to

costs. This order is subject to the final order of the CEGAT.

2. At the outset, it may also be pointed out that the learned single Judge has recorded a clear finding in the following terms :-

The petitioner is said to be a well known importer of scrap metal shellings from Singapore and other countries. In respect of the Bill of Entry dated

25-6-1993 relating to a total of 138.83 M.Ts. of scrap metals, there was an inspection and it was found that they contained stainless steel scrap

also. In fact a total of 95 MT was said to comprise of such stainless steel scrap. There are two types of stainless steel metal scraps, one being

magnetic stainless steel and the other being non-magnetic stainless steel. It is admitted that the non-magnetic stainless steel is superior and costlier.

The goods in question comprised of magnetic stainless steel scrap. The only question, therefore, is as to the value of the goods for the purpose of

customs duty. For this, the petitioner had relied on the quotation given by M/s. The Projects and Equipments Corporation of India (Government of

India undertaking), New Delhi. This is rejected by the Collector on the ground that it is only a quotation for sale and not actual price. The first

respondent has proceeded to consider the price quoted by several companies ranging between US \$ 550 and US \$ 850/MT. According to the

petitioner, these relate to the prime quality of stainless steel. After considering all the points, the first respondent comes to the conclusion that the

value of the subject goods should be determined for the purpose of duty at US \$ 330/MT CIF. In other words, the assessable value is worked out

at Rs. 10,14,597/-. Consequently, the order of the first respondent has directed confiscation of 95.65 MT of stainless steel scrap and has

permitted the release of the goods on payment of redemption fine of Rs. 1,50,000/- and imposed a penalty of Rs. 30,000/- on the petitioner. The

differential duty on the subject goods worked out at Rs. 5,43,126/-.

Thus, without deciding the validity of the order dated 3-9-1993 passed by the respondent, against which an appeal is provided to CEGAT, the

order under appeal is passed directing the release of the goods. The Collector on examining the relevant material has passed the order dated 12th

August, 1993 despatched on 3rd September, 1993, in No. S8/217/93 CR 3 & 4, S59/83/93 3 & 4 in the following terms :-

* * * * *

3. The aforesaid order of the Collector is appealable and an appeal lies to the Customs, Excise and Gold (Control) Appellate Tribunal (CEGAT)

u/s 129A of the Custom Act (hereinafter referred to as the Act). It is submitted by learned counsel for the respondent in the appeal that such an

appeal is preferred before the Customs, Excise and Gold (Control) Appellate Tribunal. The conditions for preferring an appeal are stated in

Section 129B of the Act, thus :-

* * * * *

Thus, from the aforesaid provisions contained in Section 129B of the Act, it is clear that along with the appeal, the appellant is required to deposit

the duty and interest as demanded in respect of the goods not being under the control of the Custom authorities and the penalty as levied. If the

appellant is not in a position to deposit and compliance with the condition laid down in Section 129B of the Act is going to cause undue hardship to

him, the proviso to Section 129B of the Act enables him to make an application to the CEGAT, requesting it to relieve him of the undue hardship.

In such an event, if the CEGAT is satisfied, it is open to the CEGAT to dispense with such deposit, subject to such conditions as it may deem fit to

impose so as to safeguard the interests of the Revenue. In the appeal, the CEGAT after hearing the parties, may pass orders thereon as it thinks fit,

confirming, modifying or annulling the decision or order appealed against or it may refer the case back to the Authority which passed such decision

or order with such directions as it may think fit for a fresh adjudication or decision as the case may be, after taking additional evidence if necessary.

4. The ground on which the respondent/petitioner has approached this Court under Article 226 of the Constitution of India is that in an appeal

preferred against the order of the Collector u/s 129A of the Act, the CEGAT has no power to pass an interim order, directing the release of the

goods, therefore, the respondent/petitioner has no remedy, hence it has become necessary to it to approach this Court to seek a relief of interim

nature. Along with Section 129B of the Act, Rule 41 of the Customs, Excise and Gold (Control) Appellate Tribunal (Procedure) Rules, 1982 has

to be read which empowers the Tribunal to pass interim orders.

5. Before considering the question as to whether the CEGAT has got power to pass an interim order, it is to be seen whether in exercise of the

jurisdiction under Article 226 of the Constitution, without deciding the correctness of the order of adjudication, this Court can direct the release of the goods, which are confiscated and in lieu of confiscation, the party is permitted to redeem the same on payment of redemption fine. In the writ petition, it is not the order of the Collector that is challenged. Only a writ in the nature of mandamus is sought directing the Collector to release the goods. No adjudication on the merits of the order passed by the Collector is sought. It is already pointed out that the order passed by the Collector is appealable and an appeal lies to the Customs, Excise and Gold (Control) Appellate Tribunal, which can confirm, modify or annul the decision of the Collector appealed against. Further, if the appellant is not able to deposit duty, penalty or in the interest as the case may be, it is open to him to seek an order from the CEGAT to relieve him from the undue hardship that would be caused, if the deposit has to be made. It is a settled position of law that jurisdiction under Article 226 of the Constitution of India cannot be exercised to circumvent or by-pass the remedy of statutory appeal and only for the purpose of granting a relief of an interim nature, without deciding the subject matter of the dispute. Further, an interim relief can be granted to preserve in status quo the rights of the parties, so that the proceedings do not become fructuous by any unilateral overt acts by one side or the other during its pendency of the proceedings (See *Kihoto Hollohan v. Zachillhu*, 1992 (2) S.C.C. 651. In the instant case, if the interim relief granted in the writ petition without deciding the validity of the order confiscation is allowed to remain in force, the confiscated goods will be released to the party who will dispose them of in the open market or in other manner, thereby the goods would not be available for confiscation which will result in infructualising the order of confiscation. The jurisdiction under Art. 226 of the Constitution of India shall not be exercised in such a case and in such a manner which will result in defeating the object of the law and cause loss to the public Revenue and does not advance the cause of justice.

6. A similar question arose before the Supreme Court in *The State of Orissa Vs. Madan Gopal Rungta*, . In that case, the High Court directed the

Authorities by issue of a writ in the nature of mandamus not to evict the petitioner therein from the mining quarry for a period of 90 days to enable

the petitioner to file a suit after issuing notice u/s 80, Code of Civil Procedure, 1908. The Supreme Court while allowing the appeal preferred by

the State, held thus :-

* * * * *

7. Therefore, it is clear that jurisdiction under Art. 226 of the Constitution cannot be exercised only for the purpose of granting the relief of interim

nature, when the main matter is to be decided by another authority and further consequence of granting such interim relief is to infructuate the very

order of confiscation as pointed out above.

8. In addition to this, it may also be seen as to whether the Customs, Excise and Gold (Control) Appellate Tribunal has jurisdiction to issue interim

orders. It may be pointed out here that Section 129B of the Act empowers the Customs, Excise and Gold (Control) Appellate Tribunal to confirm,

modify or annul the decision or order appealed against. It is also open to it to remit the matter back for fresh adjudication. In addition to this, Rule

41 of the Customs, Excise and Gold (Control) Appellate Tribunal (Procedure) Rules, 1982 specifically provides that the Tribunal may take such

orders or give such directions as may be necessary or expedient to give effect or in relation to its orders or to prevent abuse of its process or to

secure the ends of justice. The words ""secure the ends of justice"" are wide enough to clothe the tribunal with powers to pass such interim orders,

as it may deem fit in the facts and circumstances of the case. In addition to this, the power of Appellate Tribunal to confirm, modify or annul the

decision or order appealed against also takes in its fold to pass such interim orders as are necessary in order to aid the main relief sought for in the

appeal. To put it in other words, the interim relief is granted to preserve in status quo the rights of the parties (See Kihoto Hollohan). In Madan

Gopal's case, it has been pointed out that the interim orders are passed in aid of the main relief. Therefore, it is quite inherent in the Appellate

power and more so in the case of the CEGAT to pass such interim orders as are necessary for the purpose of ensuring that the main relief sought

in the appeal is available to the party at the end of the proceeding. The fact that Section 129E only provides for relieving the appellant from the

undue hardship that would be caused to him in depositing the duty and interest as demanded or penalty as levied, does not in any way take away

the inherent power of the Appellate Tribunal to pass such interim orders as are necessary. This is only re-stated in Rule 41 of the Customs, Excise

and Gold (Control) Appellate Tribunal (Procedure) Rules, 1982. Therefore, the contention of the learned counsel for the appellant/writ petitioner

that there is no power vested in the Customs, Excise and Gold (Control) Appellate Tribunal to pass an interim order directing the release of the

goods, therefore, it has become necessary to approach this Court for relief, cannot be accepted. However, the CEGAT while passing interim

order, it has to bear in mind the interest of both the parties and availability of goods if the same are to be confiscated at the end of the proceedings,

unless the goods are of such nature which are subject to natural decay or perishable, in such a case, it has to pass appropriate order for disposal.

9. We may also point out here that even otherwise also, it would not be just and appropriate for this Court to entertain the writ petition, because

the order is appealable to the Customs, Excise and Gold (Control) Appellate Tribunal, which can go into questions of fact and law and can set

aside or affirm or annul the order or remand it for fresh consideration. The order passed by the Customs, Excise and Gold (Control) Appellate

Tribunal can also be challenged before the Supreme Court. When there is efficacious alternative remedy provided, it would not be just and

appropriate for this Court even to adjudicate upon the validity of the order of the Collector. Even otherwise, the validity of the order of Collector

cannot appropriately be adjudicated ignoring the appeal provision. There would be no reason whatsoever to pass an order for directing the release

of the confiscated goods, without adjudicating the validity of the order of the Collector, directing confiscation of the goods. It may be pointed out

that directing of releasing of the goods would arise only, if it is found that the confiscation ordered is not sustainable. The redemption of the goods

can be allowed only if the goods are to be confiscated. Therefore, without going into the validity of the confiscation order, the direction of the

nature issued in the writ petition is not permissible.

10. It is also argued before us that it has become almost a practice in this Court to entertain such petitions and grant the relief, therefore there is no

reason for distinguishing the case on hand from all other cases, in which such a direction has been issued. In support of this, learned counsel

appearing for the respondent/writ petitioner has produced as many as 12 orders passed by this Court in 12 different matters. One of them is also

passed by a Division Bench of this Court. We shall first take up the judgment passed by a Division Bench of this Court in Writ Appeal No. 1171

of 1990. The judgment reads thus :-

This Writ Appeal is directed against the order of the learned single Judge in W.P. No. 17102 of 1990 decided on 12-11-1990.

2. We have perused the order and we find that while refusing to adjudicate on the question of correctness or otherwise of the assessment and

leaving it to the writ petitioners to take recourse to the statutory appeal, the learned single judge with a view to meet the existing situation, made an

interim arrangement and gave the following directions :-

It is now reported that an assessment has been made and a duty of Rs. 3,25,000/- has been claimed from the petitioners. On the basis of the

preliminary investigation the respondents estimated the differential duty to be paid in the range of Rs. 9,00,000/- I permit the respondents to take

such action as called for by issuing a show cause notice. In as much as there is an assessment of the goods and the claim for duty to the tune of Rs.

3,25,000/- and a differential duty estimated at Rs. 9,00,000/- I direct that on payment of the duty of Rs. 3,25,000/- plus a bank guarantee of 25

per cent of differential duty and payment of cash to the tune of 25 per cent of differential duty and a personal bond for the balance. In other

respects, it is open to the parties to file an appeal and seek relief. The goods will be released on the above conditions.

3. The directions given by the learned single Judge in the facts and circumstances of the case do substantial justice between the parties. The interest

of the Revenue has been adequately safeguarded and at the same time the interest of the writ petitioner has also been safeguarded. We find that the

discretion exercised by the learned single Judge cannot be termed as unreasonable much less perverse. There is therefore no ground for us to

interfere with the impugned order. The Writ Appeal fails and is dismissed.

Thus, it is clear that in the aforesaid decision, the question which we have considered, has not been decided. It has been only pointed out that the

directions given by the learned single Judge in the facts and circumstances of the case do substantial justice between the parties, inasmuch as

interest of the Revenue has been adequately safeguarded, at the same time interest of the petitioner has also been safeguarded. Therefore, it is clear

that except directing the release of the goods, no decision has been rendered on the question as to whether without going into the merits of the

order passed by the Collector, a direction of the nature can be issued. In all other decisions which have been rendered by learned single Judge in

Writ Miscellaneous Petition 13507 of 1988 in W.P. 9213 of 1988, dated 26-8-1988, C/SB/1579/89 in AC/SB/808/89 dated 21-8-1989

(CEGAT), W.P. 1039 of 1990 dated 31-1-1990, W.P. No. 15980 of 1990 dated 11-10-1990, W.P. No. 17448 of 1990 dated 15-11-1990,

W.A. 1517 of 1991 dated 19-12-1991, W.P. 494 of 1992 dated 30-1-1992, W.P. 5496 of 1992 dated 28-4-1992, W.M.P. 12164 of 1992 in

W.P. 8430 of 1992 dated 30-6-1992, Rev. Application Nos. 38 and 39 of 1992 dated 31-7-1992, W.P. 11583 of 1991 dated 13-8-1992 and

W.P. 13552 of 1992 dated 17-9-1992, the point in question has not been considered, a direction is issued only on the assumption that such an

order cannot be passed by the Tribunal, pending disposal of the appeal. Therefore, in none of the decisions, the question as to whether such a

relief without deciding the correctness of the order of the Collector can be granted, has not been considered. Therefore, we are of the view that the

practice that has been followed so far, does not accord with the position of law. Exercising of jurisdiction under Article 226 of the Constitution in

such manner is quite contrary to the decision of the Supreme Court in The State of Orissa Vs. Madan Gopal Rungta, and it is opposed to the

provisions of the Customs Act. Hence, we are of the view that the aforesaid decisions cannot be held to have laid down a valid and binding

precedent and the same are opposed to the decisions of the Supreme Court referred to above, as such the said decisions cannot be accepted as

laying down a law enabling this Court to exercise jurisdiction under Article 226 of the Constitution in a case where the order of the Collector

confiscating the goods and permitting redemption on payment of redemption fine, is challenged before the CEGAT and the writ petition is filed

seeking a direction to release the goods, without going into the merits of the decision rendered by the Collector. Now that we have held that the

Tribunal has got the power to pass appropriate interim orders including an order directing to release the goods, is open to the respondent if it is

deemed fit in the facts and circumstances of the case is open to the respondent/writ petitioner to approach the Tribunal for appropriate relief.

11. For the reasons stated above, this writ appeal is allowed. The order dated 27-9-1993 passed in Writ Petition 16738 of 1993 is set aside. It is

also further declared that the decision rendered in the aforesaid writ petitions cannot be considered as laying down any law or binding precedent

for exercise of jurisdiction under Article 226 of the Constitution in a matter like this. No order as to costs.