(1984) 12 MAD CK 0004

In the Madras High Court

Case No : W.A. No. 350 of 1978

Gemini Metal Works APPELLANT

Vs

The Union of India RESPONDENT

Date of Decision : 05-12-1984

Acts Referred:
Customs Act, 1962 — Section 111, 111(d), 112

Citation : (1986) 7 ECC 51 : (1985) 5 ECR 2457 : (1985) 22 ELT 27 : (1986) ILR (Mad) 139 : (1985) 98 LW 767

Hon'ble Judges : Ratnam, J;Ramanujam, J

Bench : Division Bench

Advocate : C.S. Vaidyanathan, for the Appellant; Narasimhan, Acting Central Government Standing Counsel, for the Respondent

Judgement

Ramanujam, J.—This writ appeal is directed against the decision of Mohan, J., in W.P. No. 3554 of 1975, dismissing the writ petition filed

by the appellant for the issue of a writ of certiorari to quash the order of the first respondent confirming the order of the second respondent, in

appeal subject to reduction of fine, which in turn confirmed, subject to return of fine, the original order confiscating the goods under S. 111 of the

Customs Act and imposing a redemption fine of Rs. 38,000, in lieu of confiscation. The circumstances which led to the filing of the said writ

petition by the appellant may briefly be noted. The appellant had been issued an actual users licence to import the plates waste. The said licence

was current upto 30th June, 1970. On the basis of an order placed by the appellant with a foreign seller, goods had been shipped in August, 1970

and they arrived in the Madras Harbour in November, 1970. Since the goods could not be cleared, unless there was a valid licence to import the same, the appellant applied to the fourth respondent for revalidation of the licence which expired on 30th June, 1970. The fourth respondent

ordered revalidation of the licence from 12th November, 1970, being the date of application to 31st December, 1970. Since the licence as

revalidated would not enable the petitioner-appellant to clear the goods, as the shipment itself was subsequent to the expiry of the period of the

original actual users'' licence, the appellant applied to the fourth respondent for revalidation of the licence from 30th June, 1970 to 31st December,

1970. The fourth respondent by his order, dated 26th November, 1970, revalidated the licence from 30th June, 1970 the date of expiry of the

licence upto 31st December, 1970. Thereafter, the fourth respondent by a communication dated 7th December, 1970, called upon the appellant to

return the actual user licence, as revalidated, on information from the Customs Department that as the entire quantity referred to in the actual users

licence had been imported there was no question of revalidating the licence subsequent to 30th June, 1970. The appellant returned the licence, as

required by the fourth respondent and the fourth respondent by order, dated 15th December, 1970, cancelled the licence without any further

notice to the appellant or without giving it any opportunity to put forward its case as against the proposed cancellation. Thereafter based on the

cancellation of the actual users licence on 15th December, 1970 by the fourth respondent, the third respondent initiated proceedings against the

appellant for violation of the provisions of S. 111(d) of the Customs Act, 1962. After issuing a show cause notice and after hearing the appellant,

the third respondent by his order, dated 19th August, 1971, directed confiscation of the goods and imposed a redemption fine of Rs. 38,000, in

lieu of confiscation. The appellant filed an appeal against the said order, dated 19th August, 1971 to the second respondent, who, by his order,

dated 8th September, 1972, reduced the fine to Rs. 15,000 taking into account the peculiar facts of the case and also the request of the appellant

to reduce the fine, even if the imposition of fine by the original authority was justified. As against the order of the second respondent dated 8th

September, 1972, the appellant filed an appeal before the first respondent and the first respondent has chosen to reduce the fine further from Rs.

15,000 to Rs. 13,200 by order, dated 13th December, 1973. The appellant thereafter filed W.P. 3554 of 1975 out of which the present writ appeal has arisen questioning the validity of the order of the first respondent dated 13th December, 1973, confirming the order of the second

respondent dated 8th September, 1972 subject to reduction of fine, which in turn confirmed the order of the third respondent dated 19th August,

1971, subject to reduction of fine. In the writ petition the appellant''s case was that since the order of confiscation and imposition of redemption

fine passed by the third respondent on 19th August, 1971, is based on the order, dated 15th December, 1970, passed by the fourth respondent

canceling the licence issued to the appellant and as the order of cancellation of the licence is in violation of not only the principles of natural justice,

but also the specific Clause 10 of the Imports (Control) Order, 1955, the order passed by the third respondent on 19th August, 1971, should be

taken to be invalid. With reference to this contention, Mohan, J. has found as a fact that no show cause notice was issued to the appellant before

the order was issued by the fourth respondent on 15th December, 1970 cancelling the licence and that in fact the order dated 15th December,

1970 has been passed without giving an opportunity to the appellant to put forward its case and without hearing it. But the learned Judge has

proceeded to observe as followsï¿½

Certainly the principles of natural justice cannot be applied in a rigid way divorced from the realities of the situations. To me it appears on a careful

analysis of all these that the petitioner (appellant herein) had used the revalidation for the purpose of producing the licence to Customs to obtain

clearance from Customs against R.E.P. licence making use of the flexibility provision. Therefore the petitioner was trying to play fraud. But before

the petitioner could succeed, the mistake was found and it was rectified by the Department.

The learned Judge also took the view that since the revalidation itself was incorrect, which came to be discovered only when the Customs

Department pointed out the mistake, the appellant, even if it had been given a show cause notice regarding the proposed cancellation of the

licence, would not have succeeded in resisting the cancellation. In that view, the learned Judge sustained the order of the third respondent dated

19th August, 1971, as modified by the orders of the second and first respondents dated 8th September, 1972 and 13th December, 1973 respectively. The said view taken by Mohan, J. has been questioned by the appellant in this writ appeal.

2. It is unnecessary to refer to the various matters set out in the judgment of the learned single Judge, as we are of the view that the order of

cancellation of the licence as revalidated is in violation of only the principles of natural justice but also to the statutory provision in Clause 10 of the

imports (Control) Order, 1955. Once it is found that the order of cancellation, dated 15th December, 1970 was passed without any notice to the

appellant and without hearing it, admittedly the licence as ratified by the fourth respondent conferred a benefit on the appellant and if that benefit

was sought to be taken away by the licensing authority by cancelling the licence, the appellant must be given a show cause notice regarding the

proposed cancellation so that it may have an opportunity to put forward its case against such proposed cancellation. It is one of the basic principles

of natural justice that a man cannot be condemned unheard. In this case since the benefit of the licence given to the appellant had been deprived by

canceling the licence without any notice to it and without hearing it, the order violates the principles of natural justice Further, clause 10 of the

Imports (Control) Order, 1955, makes a specific provision for giving an opportunity of being heard to a person sought to be affected. In this case,

the revalidation of the licence is said to have been ordered due to a mistake or inadvertence. In such cases, clause 10 referred to above provides

for the issue of a snow cause notice and giving of a reasonable opportunity of being heard to the person concerned. The said clause says that no

action shall be taken under clause 7 or sub-clause (1) or sub-clause (3) of clause 8 or Cl. 8-A or sub-clause (1) of clause 9 against a licence of an

importer or any other person unless he has been given a reasonable opportunity of being heard. Clause 9 provides for cancellation of licences on

various grounds. As per clause 10, before a licence is cancelled in exercise of the powers under clause 9(1), the licensee should be given a

reasonable opportunity of being being heard. In this case no such opportunity was given to the appellant before the licence in its favour was

cancelled. Thus, there is a clear violation of not only the principles of natural justice, but also the statutory provision in clause 10 of the Imports

(Control) Order, 1955. The learned counsel for the respondents contends that the appellant has not chosen to question the order of cancellation, dated 15th December, 1970 at any time before the filing of the writ petition and as a matter of fact the appellant itself in the proceedings before the

authorities below proceeded on the basis that the licence had been validly cancelled, and had been pleading only for leniency in the matter of

imposition of fine and therefore it is not open to the appellant to question the validity of the order of cancellation in these proceedings which are

directed against the subsequent order, dated 10th August, 1971 confiscating the goods imported and imposing a redemption fine of Rs. 38,00 Of

which was later reduced to Rs. 13,200 as a result of the revisional order passed by the first respondent on 13th December, 1973. It is no doubt

true that the order of cancellation of the licence passed on 15th December, 1970 has not been directly canvassed by the appellant in these

proceedings, nor did the appellant question the order of cancellation before the first, second and third respondents and it has chosen to attack the

order of cancellation only collaterally while questioning the order of the first respondent, dated 15th December, 1973, by which the original order

of the third respondent dated 19th August, 1971 stood confirmed, subject to the reduction of fine.

3. The question is, whether the appellant is entitled to attack the validity of the order of cancellation of the licence dated 15th December, 1970,

collaterally in these proceedings which are directed against the order passed by the first respondent on 13th December, 1973. It is well established

by now that an order which is found to be void for violation of the principles of natural justice can be attacked in a collateral proceeding initialed on

the basis of such void order. A casual reference to the decision of the Supreme Court in Nawabhkhan Abbasnkhan v. State of Gujarat AIR 1974

SC 1479-1480 is sufficient to sustain the above proposition. The Supreme Court, while meeting the contention that there should be a direct attack

against an order said to violate the principles of natural justice and there cannot be a collateral attack, observed as follows:

But we do hold that an order which is void may be directly and collaterally challenged in legal proceedings. An order is null and void if the statute

clothing the administrative tribunal with power conditions it with the obligation to hear, expressly or by implication. Beyond doubts an order which

infringes a fundamental freedom passed in violation of the audi alteram partem rule is a nullity. When a competent Court holds such official act or order invalid, or sets it aside, it operates from nativity, i.e., the impugned act or order was never valid.

4. It is unnecessary to refer to other authorities and multiply citations in support of the statement that an order passed in violation of the principles

of natural justice is void and it should be taken to be a nullity. Though the said order dated 15th February, 1970 cancelling the licence in violation

of the principles of natural justice and without observing the statutory provision in clause 10 of the Imports (Control) Order, 1955, has not been

made the subject matter of direct a tack in the writ proceedings, since, however that order has given rise to the subsequent order passed by the

third respondent on 19th August, 1971, the appellant while questioning the validity of the order of the third respondent dated 19th August, 1971,

can make a collateral attack against the order of cancellation dated 15th December, 1970. We find that the impugned order dated 19th August,

1971 has been passed on the basis that the appellant bad no valid licence on the date of the import of goods and therefore, the import was

unauthorised. If there was no cancellation of the licence, we cannot say whether the impugned order would have been passed by the authorities.

The learned counsel for the respondents would contend that even if there has been no cancellation of the licence, since the quantity referred to in

the licence had already been exhausted by actual user, the appellant cannot import any goods in pursuance of the said licence. However, the

learned counsel for the appellant refers to a notification dated 13 May, 1970 which proceeds on the basis that the actual users licence of which the

period of validity has not expired, but the value has been exhausted, will be treated as a valid licence. According to the learned counsel for the

appellant, if the licence has not been cancelled, it can form the basis for import notwithstanding the value mentioned in the licence having been

exhausted. However, this position is controverted by the learned counsel for the respondents by contending that the said provision will apply only

till the currency period of the licence and not after its expiry and that in this case the licence had expired by 30th June, 1970 and even though the

same had been revalidated, the revalidated licence cannot have the benefit of the said provision. It is unnecessary for us to decide the question as

to whether the revalidated licence, if it has not been cancelled, will make the import unauthorised, in view of the order we propose to make in this case.

5. As already stated, we have held that the appellant can make a collateral attack of the order of cancellation dated 15th December, 1970, in these

proceedings and in fact the said order of cancellation is void for violation of not only the principles of natural justice, but also clause 10 of the

Imports (Control) Order, 1955. Since the sole basis for passing the impugned order is the cancellation of the licence and as we have held that the

cancellation of the licence is bad not only for violating the principles of natural justice but also for violating clause 10 of the imports (Control)

Order, 1955, the impugned order dated 19th August, 1971 and the subsequent order dated 8th September, 1972 passed by the second

respondent and the revisional order passed by the first respondent, dated 13th December, 1973, cannot have any valid basis and therefore, all the

orders originating from the order dated 19th August, 1971, will stand quashed. We also hold that the order of cancellation dated 15th December,

1970, passed by the fourth respondent is void. The fourth respondent is, however, given the liberty to issue a show cause notice to the appellant

against the proposed cancellation of the licence and pats final orders after hearing its objections regarding the proposed cancellation of the licence.

Fresh proceedings, if any, for cancellation of the licence should be initiated and completed by the forth respondent within four months from this

date Any further proceedings contemplated by the third respondent will depend upon the final orders to be passed by the fourth respondent on the

proposal to cancel the licence. In the event of the fourth respondent canceling the licence of the appellant, it is open to the third respondent to

initiate proceedings afresh under Ss. 111(d) and 112 of the Customs Act. The writ appeal is allowed accordingly and there will be no order as to

costs.

