

(1978) 05 KL CK 0010

In the High Court Of Kerala

Case No : Writ Appeal No. 321 of 1975

India Sea Foods (Regd.)

APPELLANT

Vs

Collector of Customs and Central Excise

RESPONDENT

Date of Decision : 25-05-1978

Acts Referred:

Customs Act, 1962 — Section 111, 112, 77

Citation : (1984) 16 ELT 243 : (1978) 2 ILR (Ker) 634

Hon'ble Judges : V.P. Gopalan Nambiyar, C.J.; M.P. Menon, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

V.P. Gopalan Nambiyar, C.J.—The appeal is against the judgment of a learned Judge dismissing the writ petition to quash the orders of the Customs Officer directing confiscation of certain imported goods by the petitioners and levying a penalty for illegal import of the said goods. Ext. P-1 is the order passed by the Collector of Customs. The same was confirmed on appeal by Ext. P-2 order of the Central Board of Excise & Customs, and, on revision by Ext. P-4 order by the Government of India. The 1st writ-petitioner is the firm under the name and style, India Sea Foods. The 2nd writ-petitioner is its Managing Partner. In brief, the firm was granted an import licence dated 27-3-1965 to import Refrigeration Compressors except 15 to 150 TRC (Ton Refrigeration Capacity) and controls, for installing cold storage ice plant and blast freezers, and certain other items of goods. It placed an order with Frick Company, Waynesbore, Pennysylvania, U.S.A. through M/s. Bombay Amonia Private Ltd., for supply of two 6" X 6" Frick Amonia Compressors, with a capacity of 7.54 TRC at O. Psig Suction Pressure, while running at 450 RPM. When the consignment reached the Port of Cochin, the Customs authorities felt that the capacity of the imported goods was not according to the specifications and they prohibited the transport of the goods on the ground that the same was not covered by the import licence. A show cause notice followed for contravention of Section 111(d) of the Customs Act and for

imposition of a penalty u/s 112(a) thereof. These Sections read :

"111. Confiscation if improperly imported goods, etc.-The following goods brought from a place outside India shall be liable to confiscation :-

* * *

(d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;

* * *

112. Penalty for improper importation of goods, etc.-Any person :-

(a) who, in relation to any goods does or omits to do any act which act or omission would render such goods liable to confiscation u/s 111, or abets the doing of omission of such an act, or

(b) * * *

shall be liable-

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding five times the value of the goods or one thousand rupees, whichever is the greater;

(ii) in the case of dutiable goods, other than prohibited goods, to a penalty not exceeding five times the duty sought to be evaded on such goods or one thousand rupees, whichever is the greater;

(iii) in the case of goods in respect of which the value stated in the entry made under this act or in the case of baggage, in the declaration made u/s 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty not exceeding five times the difference between the declared value and the value thereof or one thousand rupees, whichever is the greater;

(iv) in the case of goods falling both under Clauses. (i) and (iii), to a penalty not exceeding five times the value of the goods or five times the difference between the declared value and the value thereof or one thousand rupees, whichever is the highest;

(v). in the case of goods falling both under Clauses. (ii) and (iii), to a penalty not exceeding five times the duty sought to be evaded on such goods or five times the difference between the declared value and the value thereof or one thousand rupees, whichever is the highest."

After receipt of the explanation from the firm and a further one from the second writ-petitioner among others (the show cause notice was also issued to the

second writ-petitioner) by the impugned orders the imported Refrigeration Compressors were confiscated and a penalty of Rs. 30,000/- was imposed on the firm and also on the second writ-petitioner, the Managing Partner.

2. Before the learned Judge a great deal of argument was devoted to establish that the Compressors imported were covered by the terms of the licence and that there was no contravention of Section 111(d) of the Customs Act. Before us counsel for the appellant very rightly realised the limitations in pursuing this line of argument in view of the concurrent findings of fact under the impugned orders Exts. P-1, P-2 and P-4 and the judgment of the learned Judge. Accordingly, he confined his attack to one question alone, namely, that the imposition of penalty u/s 112 of the Act on the firm as well as on the Managing Partner was unjustified and unsustainable in law. We have extracted Section 112(a) of the Act which alone is the material part thereof. Under the provisions of that Clause the penalty can be imposed on any person, who, in relation to any goods does or omits to do any act which would render such goods liable to confiscation. It can also be imposed on any one who abets the doing or omission of such an act. We do not see, and are unable to understand, why the firm and the partners thereof cannot both be adjudged guilty of contravention or be subjected to a penalty under the provisions of the Act. It is possible to find, as in this case, the firm guilty of an act or omission which renders the goods liable to confiscation, and at the same time to find the partners thereof guilty of abetment in the doing or omission of such act. It seems possible again, to find the legal entity of a partnership liable for the act or contravention, and at the same time to hold the human agency through which it acts, also responsible for the same. In the instant case the involvement in the fabrication for which the second writ-petitioner has been found liable for the imposition of a penalty, is fabrication of a letter dated 23-12-1964, a copy of which has been filed as Ext. R-2. The Collector of Customs in Ext. P-1 order dealing with the liability of the 2nd petitioner to imposition of penalty stated thus :

"As regards M/s. I.S.F. they have also collaborated in the plot to hoodwink the Customs particularly in regard to fabricated letter dated 23-12-1964. I also accordingly consider them fit for imposing a personal penalty u/s 112(a) of the Customs Act, 1962. Sri B.M. Edward in his reply to the show cause memo dated 1-9-1966 has stated that he was not directly dealing with the matters and had no personal knowledge of the transactions and that he should therefore be exonerated from the charges.

This is totally belied by the fact that the fabricated letter dated 23-12-1964 has been personally signed by him and this could not have happened if he did not have any knowledge of the transaction. I also therefore, consider him as fully liable to a personal penalty u/s 112(a) of the Customs Act, 1962."

3. There is some indication to show that the imposition of personal penalty was attacked by the second writ-petitioner in the appeals preferred before the departmental authorities and also in the writ petition before the learned single

Judge. There is no specific advertence to this aspect of the case nor any finding in regard to this aspect, by the learned single Judge in his judgment. But that is a matter which can cut both ways. Counsel for the appellant fairly realised that having regard to the terms and the language of Section 112(a) of the Act, the extreme contention that a penalty is not imposable both on the firm and also on the Managing Partner thereof, cannot sustain. But he took his stand that neither the show cause notice, nor the charge against the appellants had referred to any abetment as mentioned in Section 112(a) of the Act as against the second writ-petitioner so as to justify imposition of a penalty under the terms of the said clause. The show cause notice issued as such, is not before us; and in the absence of specific complaint before the authorities or before the learned Judge about the absence of jurisdiction or power to impose a penalty both against the firm and against the partners, we have our Limitations, for the first time to entertain this aspect of the matter in writ appeal.

4. We see no ground to interfere with this part of the award of the departmental authorities or the judgment of the learned Judge sustaining the same. We dismiss this appeal with no order as to costs.