

(1999) 08 SC CK 0024

In the Supreme Court Of India

Case No : Civil Appeal No. 11858 Of 1995

Indian Acrylics

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 12-08-1999

Acts Referred:

Customs Act, 1962 — Section 14

Citation : (1999) 66 ECC 1 : (1999) 113 ELT 373 : (2000) 2 SCC 678

Hon'ble Judges : S. P. Bharucha, J; R. C. Lahoti, J; N. Santosh Hedge, J

Bench : Full Bench

Final Decision : Allowed

Judgement

1. This appeal is against the judgment and order of a Division Bench of the High Court of Punjab and Haryana. Thereby the writ petition filed by the appellant was dismissed. Briefly stated, these are the facts :

2. The appellant purchased a consignment of acrylonitrile from a supplier in the United States of America and, on 29th April, 1992, filed with the Customs authorities at Kandla the Bill of Entry in respect thereof. It is common ground that the price indicated in the Bill of Entry reflects the true value of the consignment.

3. On 29th April, 1992 the exchange rate notified by the Reserve Bank of India was one U.S. dollar equal to Rs. 25.95. On 27th March, 1992 the respondents, acting in exercise of the power conferred by Section 14(3) of the Customs Act, notified the rate of exchange for the purposes of Section 14 at one U.S. dollar equal to Rs. 31.44. For the purposes of customs duty the rupee equivalent of the price paid for the appellant's consignment was calculated at this rate.

4. The appellants filed the writ petition to quash the notification dated 27th March, 1992, inter alia, on the ground that the fixation of the exchange rate there under was arbitrary. As aforesaid, the writ petition was dismissed.

5. It is clear that there is power in the Central Government to determine the rate of exchange for the purposes of Section 14 of the Act, that is to say, in respect of the rate of exchange applicable in the computation of the value of imported goods. The question is whether the fixation of the rate of Rs. 31.44 on 27th March, 1992, with effect from 1st April, 1992, is arbitrary, principally, having regard to the fact that the Reserve Bank of India's rate at the relevant time was Rs. 25.95, which is not disputed.

6. The counter filed by the respondents before the High Court, as also before this Court, does not indicate why the rate was fixed at Rs. 31.44. The affidavits do not indicate that the prevalent Reserve Bank of India rate had been taken into consideration. Strangely, the High Court, advertent to this contention, stated, "In the absence of any other material brought on record, it cannot be held that the rate of exchange by the Central Government u/s 14(3)(i) is arbitrary" and it said this after noting the contention on behalf of the appellant that the Central Government rate was arbitrary being different from that fixed by the Reserve Bank of India.

7. The exchange rate fixed by the Reserve Bank of India is the accepted and determinative rate of exchange for foreign exchange transactions. If it is to be deviated from to the extent that the notification dated 27th March, 1992 does, it must be shown that the Central Government had good reasons for doing so. The Reserve Bank of India's rate, as we have pointed out, was Rs. 25.95, the rate fixed by the notification dated 27th March, 1992 was Rs. 31.44, so that there was difference of as much as Rs. 5.51. In the absence of any material placed on record by the respondents and in the absence of so much as a reason stated on affidavit in this behalf, the rate fixed by the notification dated 27th March, 1992 must be held to be arbitrary.

8. Having regard to the lapse of time and the complications which might result, we refrain from striking down the said notification, but direct that so far as the appellants are concerned, the value of their consignment shall be calculated at the exchange rate of one U.S. dollar equal to Rs. 25.95. This is what, in fact, has been paid.

9. The appeal is allowed to the extent aforesaid. The order under challenge is set aside. The bank guarantee furnished by the appellants for the balance at the higher exchange rate shall stand discharged. No order as to costs.