(1977) 01 CAL CK 0037

In the Calcutta High Court

Indian Steamship Co. Ltd. APPELLANT

Vs

The Additional Collector of Customs and Another RESPONDENT

Date of Decision : 11-01-1977

Acts Referred:
Customs Act, 1962 — Section 112, 115

Citation : (1977) CriLJ 1827 : 82 CWN 497

Hon'ble Judges : Dipak Kumar Sen, J

Bench : Single Bench

Judgement

Dipak Kumar Sen, J.—The facts which have led to these proceedings are mostly undisputed. The vessel ''S. S. Indian Resolve'' arrived at the port of Calcutta on or about the 8th October, 1974 from the United Kingdom touching on her way the Continental Ports, Bombay, Colombo, Madras and Visakhapatnam. She was carrying a quantity of cargo imported for delivery at different Indian Ports including the Port of Calcutta.

2. In the usual course the said vessel was carrying bonded stores-in-charge of one Peter Sherazee, who at the material time was the Purser of the vessel. Peter Sherazee had also sailed as Purser of the said vessel in her two previous voyages.

3. According to the Bonded stores list which was handed over to the Customs Officer by the Purser when the said vessel arrived at Calcutta there was a quantity of 1,22,400. pieces of cigarettes in store packed inter alia in unopened large cartons for 5000 cigarettes, bound by iron strips. There were also smaller cartons and opened cartons.

4. On checking by the Customs the unopened large cartons appeared to be Intact.

5. Under Customs Rules and Regulations, cigarettes, tobacco and alcoholic liquor kept in the ship''s stores in foreign-going vessels are sealed in the vessel''s bondroom while in port and cannot be taken out of bond without the permission of the appropriate Customs Officer and are so taken out only in the latter''s

presence.

6. Accordingly after checking, the bond-room of the said vessel was locked and sealed by the Customs Officer.

7. Thereafter on two occasions viz., on the 12th and the 16th Oct., 1974 Peter Sherazee took out some cigarettes from the bond-room in the presence of the Customs Officer. On both these occasions the Customs'' seal on the bond-room was found intact.

8. On the 28th Oct., 1974 one S, K. Mukherji took over charge as Purser of the said vessel from Peter Sherazee. On that day S. K. Mukherjee with Peter Sherazee accompanied by the Customs Officer verified the stock in the bond-room and also took out some cigarettes and alcoholic liquor for consumption in the vessel. The large cigarette cartons still appeared to be intact. Thereafter the bond-room was duly locked and sealed.

9. On the 4th Nov., 1974 next, S. K. Mukherjee with the Customs Officer went to the bond-room for taking out a further quantity of cigarettes. This time the seal of the bond-room though found intact, one of the large cartons when opened was found to be completely empty. Thereupon all the large unopened cartons were checked and it was found that nine of them were empty. On the basis of the stock statement as submitted there was a shortage of 45,000 cigarettes.

10. A report on this incident was forwarded by S. K. Mukherjee to the Marine Superintendent of the petitioner Indian Steamship Company Ltd., the owner of the said vessel and a copy thereof was sent to the Customs Department.

11. On the 9th Nov., 1974 the Customs Officer boarded the vessel, seized the empty cartons and recorded statements of the Master of the vessel, the said S. K. Mukherji and Peter Sherazee. Subsequently, on the llth and the 28th Nov. and the 2nd Dec., 197 , Peter She- razee made three further statements before the Customs Officer. Such statements were also recorded.

12. In the statements made respectively on the 9th and the llth Nov., 1974, Peter Sherazee had asserted that the stores list initially submitted by him to the Customs was correct, that the vessel did in fact have 1,22,400 cigarettes on board and that he was in no way responsible for the shortage detected later. By his subsequent statements made respectively on the 28th Nov. and the 2nd Dec., 1974 Peter Sherazee, however, retracted his earlier statements admitting that they were false. He stated that the quantity of cigarettes initially declared by him in the store''s list was incorrect, the truth being, that the total quantity of cigarettes actually imported by the said vessel was only 77,400 and not 1,22,400. He had deliberately inflated the number of the cigarettes in the books for certain reasons.

13. The said vessel left the Port of Calcutta on a foreign voyage on or about the llth Nov., 1974 after the petitioner had deposited a sum of Rs. 50,000 with the Customs Authorities as security for any fine or penalty which might be imposed

in respect of the said alleged shortage.

14. On the 9th April, 1975 the Assistant Collector of Customs for Preventive (Adjudication), Calcutta issued a notice to the petitioner alleging, inter alia, that 45,000 cigarettes were found short in the bond-room of the said vessel on the 4th Nov., 1974 and that no satisfactory explanation was forthcoming from the petitioner of the alleged shortage and that it was reasonably believed that the said cigarettes had been removed clandestinely from the vessel while she was in port. It was contended that the said vessel was, therefore, liable to be confiscated u/s 115(1)(e) of the Customs Act, 1962. By the said notice, the petitioner was called upon to show cause why the said vessel should not be confiscated and why penal action should not be taken u/s 112 of the said Act. The bases of the said notice were the various statements made by the officers of the ship including those of Peter Sherazee.

15. The petitioner duly replied to the said notice whereafter a personal hearing was granted. The proceedings were finally disposed of by an order dated the 23rd Aug., 1975 passed by the Additional Collector of Customs, who found, inter alia, as follows:

(a) That the said vessel did have 1,22,400 cigarettes on board when she arrived at Calcutta ;

(b) 45,000 cigarettes were subsequently found missing from the bond-room of the said vessel ;

(c) The said 45,000 cigarettes had been unlawfully removed by Peter Sherazee on some date between the llth Oct, 1974 and the 28th Oct., 1974.

16. It was contended on behalf of the petitioner that the shortage was inconsequential compared to the value of the entire imported cargo carried by the said vessel and therefore the said Section 115(1)(e) pf the Act was not attracted. This contention was repelled by the Additional Collector who, held as follows:

It has not been defined as to what ''substantial portion'' would refer to. In the case of a vessel, the value of her whole cargo and other imported goods carried thereon could be enormous. If a Master of the vessel clandestinely disposes of say goods worth Rs. 10 lakhs even when it can be argued by calculating the percentage that the loss deficiency is ''inconsequential'' in terms of percentage with reference to the total value of the missing goods, however, nobody can say that such deficiency is inconsequential. In my opinion the word ''substantial portion'' does not necessarily refer to the ratio between the value of missing goods and total value of the cargo. On the other hand in order to be meaningful in terms of the spirit and the various provisions of the Customs Act, the term ''substantial'' should refer to the value of the missing goods in themselves. 1 entirely agree with the owners of the vessel, the Master and the Steamer agents that a deficiency of 2 or 3 cigarettes cannot be considered as substantial but a deficiency of 45,000 cigarettes is, in my opinion, certainly substantial. This lot is certainly a substantial portion of the imported goods carried by the vessel. The amount of duty leviable on the missing quantity is more than Rs. 31,000. Taking all these relevant factors into consideration I consider that the loss or deficiency amounting to Rs, 45,000 pieces of cigarettes has rendered the vessel liable to confiscation u/s 115(1)(e), Customs Act, 1962.

17. This decision and order of the Additional Collector of Customs dated the 23rd Aug., 1975 is impugned in the present proceedings on, inter alia, the following grounds:

I. The Additional Collector erred in his interpretation of Section 115(1)(e) of the said Act and in holding that the vessel was liable to confiscation even though the goods which were adjudged missing did not constitute either the whole or a substantial portion of the imported goods carried by the vessel while she entered India.

II. The Additional Collector erred in holding that the words ''substantial portion of such goods'' in Section 115(1)(e) of the said Act does not refer to the ratio between the missing goods and the total cargo imported by the vessel into India.

III. The finding of the Additional Collector that 45,000 cigarettes was a substantial portion of the imported goods carried by the vessel into India was founded on misinterpretation of the provisions of Section 115(1)(e) of the said Act and was arbitrary and perverse.

IV. The finding of the Additional Collector that the alleged shortage occurred between llth Oct. and 28th Oct., 1974 was fanciful and arbitrary.

18. On the application of the petitioner, a Rule nisi was issued on the 14th January, 1976 calling upon the respondents, the Additional Collector of Customs and the Union of India to show cause why a writ in the nature of certiorari should not be issued setting aside, cancelling or quashing the said order dated the 23rd Aug., 1975 made by the Additional Collector of Customs, Calcutta and the respondents were directed to produce or cause to be forwarded to the Registrar of this Court all documents, orders and proceedings relating to the said order for the aforesaid purpose.

19. At the hearing Mr. Ajit Roy Mukherjee, learned Counsel for the petitioner, did not contest the findings of the Additional Collector of Customs as to facts. He fairly conceded that on the evidence on record it was possible to have two different opinions and the finding of the Additional Collector of Customs that the said 45.000 cigarettes could have been clandestinely removed by Peter Sherazee between the llth and the 28th Oct., 1974 could not be said to be based on no evidence whatsoever. He contended however that the order was vitiated by reason of an entirely erroneous interpretation of Section 115(1)(e) of the Customs Act, 1962.

20. It is convenient to set out here the said section which reads as follows :

115. (1) The following conveyances shall be liable to confiscation:

(a) ....

(b) ....

(c) ....

(d) ....

(e) any conveyance carrying imported goods which has entered India and is afterwards found with the whole or substantial portion of such goods missing, unless the master of the vessel or aircraft is able to account for the loss of, or deficiency in, the goods.

21. Mr. Roy contended that on a plain reading of the section it was amply clear that in order to make a vessel liable to confiscation thereunder the following condition and each of them must found to be established.

(a) That the offending vessel was carrying imported goods.

(b) That such offending vessel entered India ;

(c) That such vessel was afterwards found with whole or substantial portion of "such imported goods" missing ;

(d) That the master of the vessel is found unable to account for the loss of or deficiency in the goods.

22. He contended that unless each of these conditions was found to be satisfied a vessel could not be confiscated.

23. Mr. Roy Mukherjee admitted that the vessel was carrying imported goods and had entered India. It was a matter of record that the imported goods scheduled to be unloaded at Calcutta consisted, inter alia, of 847 tonnes iron and steel. 200 tonnes of carbon Blocks and Plates, 6 tonnes of milk powder and 976 tonnes ''of machinery, spare part equipments and other general cargo, 45,000 cigarettes which were missing were an insignificant portion of such goods and even if their loss was not duly accounted for the said section was not attracted for confiscation of the said vessel.

24. In furtherance of his arguments Mr. Roy Mukherjee cited the corresponding section viz. Section 167(4) of the earlier statute namely, the Indian Sea Customs Act, 1867 which provided inter alia as follows:

(For Section see next page)

25. Mr. Roy Mukherjee drew the attention of the Court to the express difference in language between Section 167(4) of the earlier Act with Section 115(1)(e) of the later Act and contended that in drafting Section 115 of the Customs Act, 1962 the legislature should be deemed to have Offences Section Penalties of this Act to which offence has reference

4. If any vessel which has been within the limits of any port in India or within the Indian Customs waters, with cargo on board, be afterwards found elsewhere in such waters or in any port, bay, river, creek or arm of the sea in India, (i) light or in ballast ; or (ii) with any part of such cargo missing, and the master of the vessel is unable to give due account of how the vessel came to be light or in ballast, or of the missing cargo.

Such vessel shall be liable to confiscation and the master of such vessel shall be liable to a penalty not exceeding one thousand rupees.

deliberately altered the language of the section to bring about a change in law, Citing Maxwell on Statutes he contended thai the plain meaning of the words of the section in the later Act should be given effect to.

26. Mr. G. P. Kar, learned Counsel for the respondents contended on the other hand that the words ''such goods'' in Section 115(1)(e) of the Customs Act, 1962, must be construed to mean missing goods. Mr. Kar did not cite any authority for his interpretation or on the principles on which he sought to construe the section. Mr. Kar made no other submission,

27. On a careful consideration of the respective submission of the parties it appears to me that the interpretation of the section as suggested on behalf of the petitioner is more acceptable. The principles of construction are clear and have been laid down by diverse authorities, Craies on Statute Law (6th Edn.) states the law at page 66 as follows:

If the words of the statute are themselves precise and unambiguous, then no more can be necessary than to expound those words in their ordinary and natural sense. The words themselves alone do in such a case best declare the intention of the law giver.

28. Another principle of construction, applicable in cases where there is ambiguity in the expressions used in a statute, also support the contentions of the petitioner. Where the language employed by the Legislature in an earlier statute on a particular subject has been departed from in a subsequent statute relating to the same subject, it is generally, but not always, a fair presumption that the alteration in the language used in the subsequent statute was intentional.

(Craies 6th edition, page 141).

29. To accept the construction as suggested by Mr. Kar I have to read in Section 115(1)(e) of the Customs Act, 1962 the words ''any portion'' or ''any part'' instead of ''substantial portion'' as governing the imported goods. The meaning being unambiguous it is not necessary for me to import such qualifying words in the section. Moreover, I am not inclined to read such qualifying words in a statute which is penal and expropriatory

30. For the reasons as above I hold that the order dated the 23rd Aug., 1975 so

far as it directs the confiscation of the said vessel is vitiated by an erroneous interpretation of Section 115(1)(e) of the said Act and I set aside the same. To this extent the Rule is made absolute. The respondents, however, will be at liberty to proceed with the enquiry in the light of the observations made in this judgment and determine whether the missing imported goods in the instant case form a substantial portion of the total quantum of imported goods in bulk and/or in value and decide accordingly. The penalty of Rs. 10,000 imposed on Peter Sherazee u/s 112 of the Customs Act, 1962 by the said order dated the 23rd Aug., 1975 is sustained. There will be no order as to costs.

