(1960) 05 CAL CK 0004

In the Calcutta High Court

Case No : Matter No. 14 of 1960

Jagannath Agarwalla APPELLANT

Vs

B.N. Dutta RESPONDENT

Date of Decision : 19-05-1960

Acts Referred:
Sea Customs Act, 1878 — Section 167(5), 167(8)

Citation : (1961) 1 ILR (Cal) 840

Hon'ble Judges : Sinha, J

Bench : Single Bench

Advocate : Choudhuri, for the Appellant; A.C. Mitra, for the Respondent

Final Decision : Dismissed

Judgement

Sinha, J.—The facts in this case are briefly as follows: On or about February 23, 1959 the Petitioner obtained a license for import of drugs and medicine as per Appendix XIX to the current Red Book. The current Red Book, is the import trade control policy of the Government of India for the licensing period October 1958 to March 1959. The licence related to items 87 and 109 of Part IV of the I.T.C. Schedule, valid up to August 31, 1959, and was granted under the Imports and Exports (Control) Act, 1947. I have already stated that the license related to drugs and medicine as per Appendix XIX. This Appendix has the following heading:

List of Drugs and Medicines and Pharmaceutical Chemicals falling u/s Nos. 87 and 109 of Part IV and Section No. 31(b) of Part v. for the import of which the licensing policy indicated below will be followed during October, 1958 March, 1959 licensing period.

2. In the license itself, Section Nos. 87 and 109 of Part IV are mentioned. Section No. 87 is "Drugs and Medicine containing spirit" Section No. 109 is "Drugs, Medicines, all sorts, not otherwise suecified in this Schedule". Section No. 131 is "Camphor" of which the importation for this period was totally prohibited.

Appendix XIX contains several lists. One of the items in list I is "terpine and its derivatives excluding preparations thereof". The Petitioner proposed to import camphor B.P. stated to be a derivative of terpine, by virtue of the aforesaid licence. On or about May 16, 1959 a letter was sent to the Joint Chief Controller of Imports and Exports, relating to this proposed importation by Messrs. Arun and Company, through whom the Petitioner was proposing to import the goods. Actually that letter has not been disclosed, but presumably it must have been an enquiry as to whether camphor B.P. stated to be a derivative of terpine, could he imported under the said licence. On June 5, 1959 the Assistant Controller of Imports wrote back in reply to say as follows:

With reference to your letter No. 1(5/Ac/JCCI/59-60, dated 16-5-59, on the subject I am to inform you that since Camphor B.P. is stated to be a derivative of Terpine, your attention is invited to the Public Notice No. 2. ITC (PNJ/59, dated 9th January, 1959, as reproduced by this office Notice No. 3-JC.CI/59, dated 12-1-59 regarding import of "Terpine and its derivatives excluding preparations thereof" against Drugs and Medicine licenses for the period October, 1958 March, 1959 which is self-explanatory.

3. On June 8, 1959 Messrs. Arun and Company appears to have written another letter to the Assistant Drugs Controller on the same subject. This letter also has not been disclosed but, the answer of the Assistant Drugs Controller, dated June 12, 1959, has been disclosed. The letter states as follows:

With reference to your letter No. 34/AC/ADC/59-60, dated June 8, 1959, I have to state that Camphor B.P. can be imported against the entry "Terpine and its "derivatives excluding preparations thereof" in List I of Appendix XIX against a licence for drugs and medicines.

It may be borne in mind that only Camphor of B.P. U.S.P. or I.P. quality will be allowed under licence for Drugs and Medicines.

4. On July 3, 1959 the Assistant Drugs Controller wrote to Messrs. Aran and Company a letter, in which reference was made to the letter of Messrs. A run and Company, dated June 8, 1959, and the reply thereto from the Assistant Drugs Controller, dated June 12. 1959. set out above. The letter then proceeded to state three things. Firstly, it was pointed out that the letter, dated June 12, 195!), related only to the licensing period October, 1958 to March, 1959. It was pointed out that in the current policy subsequent to March, 1959, the entry-"Terpine and its derivatives excluding preparations thereof" had been (hanged to "Terpine Hydrate excluding preparations thereof". The second thing that was pointed out. was that the letter of the Assistant Drugs Controller dated 12th June, 1959 was issued by oversight and was cancelled and no responsibility was accepted for the statements being made therein. Lastly, it was pointed out that the proper authorities from whom an interpretation of the policy should be obtained were the Joint Chief Controller of Imports and Exports and the Assistant Collector for Appraisement, Customs House, Calcutta. On the same day, the

Petitioner is stated to have entered into a contract with Messrs. Arun and Company for the import of a quantity of "Camphor" B.P. (derivative of Terpine excluding preparations thereof) and Messrs. Arun and Company issued an indent for the same on Messrs. W. A. Fritze and Company of Bremen, West Germany. On July 13, 1959 the Controller of Imports wrote to Messrs. Arun and Company that the letter, dated June 5, 1959, contents whereof have been set out above "may be treated as withdrawn and cancelled". On July 15, 1959 another letter was written by the Controller of Imports to Messrs. Arun and Company stating that camphor of any quality and grade, was totally banned for import during the period October, 1958 to March, 1959 as also the current licensing period. Therefore, its import could not be allowed under a licence issued for drugs and medicines. It was pointed out that an amendment was made in the relevant entry in List I of the Appendix XIX to prevent any import of camphor under this Section No. It was intimated that camphor could not be imported as derivative of terpine against a drugs and medicine licence, either for the current period or earlier periods. On July 22, 1959 it was publicly notified that the importation of camphor of all varieties, grades and qualities was totally banned and that it could not also be imported as a derivative of terpine, under a drugs licence issued u/s Nos. 87 and 109 of Part IV of the I.T.C. Schedule. On July 25, 1959 the Petitioner appeared to have written to Messrs. Arun and Company requesting them to make arrangements for the cancellation of the indent drawn upon Messrs. W. A. Fritze and Company, Bremen, West Germany. On August 5, 1959 Messrs. Arun and Company informed the Petitioner that their principals had refused to cancel the indent. Thereafter, the goods were shipped by S.S. Troza which arrived at the Port of Calcutta on 19-10-59. On 21-10-59 a show cause notice was issued on the Petitioner asking him to show cause why the goods should not be confiscated and penal action taken u/s 167(8) of the Sea Customs Act. The Petitioner showed cause and on December 15, 1959, after hearing the Petitioner the Assistant Collector of Customs for Appraisement passed an order confiscating the goods, under the provisions of Section 167(5) of the Sea Customs Act. It is against this order that this application is directed.

5. The argument on behalf of the Petitioner is briefly as follows:

It is stated that the licence for drugs and medicines is issued under Appendix XIX, and one of the headings is-"Terpine and its derivatives, excluding preparations thereof". It is not disputed in this case that camphor B.P. which has been imported is a derivative of terpens. II is, therefore, stated that the importation is covered by the licence and is, therefore, perfectly in order. Coming to Section Nos. 87 and 109 it is conceded that the matter comes u/s No. 109, but it is argued that Section No. 131 relating to "camphor" either does not apply at all or that camphor B.P. which is a derivative of terpine comes under item No. 109 which is a special item and, therefore, the general provisions of item No. 131. will not apply. It is next argued that the Joint Chief Controller of Imports and Exports as well as the Assistant Drugs Controller bad clearly supported the position that camphor B.P. which was a terpine derivative could be imported under a licence issued under Appendix XIX and, therefore, it is not open to the Customs Authorities to take a different view at this stage when the goods have been shipped and have arrived at their destination.

6. Before we proceed to consider this point, it would be useful to know something about camphor. It is a chemical substance, indicated by the formula OCI0 H160. It is obtained from a tree called Camphor laurel (cinnamomum camphora) flourishing in Japan, Formosa and Central China. This is done '' - sublimation and the product is called natural camphor. (sic) also occurs in various other essential oils. It may also (sic)d from terpentine oil or terpene, when it is known (sic) mphor. In either case, it contains not less than 96.0 per cent of C10 Hl6 O. and is a colourless, transparent crystalline mass, with a penetrating odour and pungent, aromatic taste. In this particular case, the goods concerned are camphor B.P. which is a terpene derivative and might, therefore, be considered as synthetic camphor. The first thing to be considered is as to whether Section No. 131 in the I.T.C. Schedule which reads as-"camphor" should be confined only to natural camphor and not synthetic camphor. 1 myself see no reason to restrict the meaning. As I shall presently show, it is for the Customs authorities concerned to decide as to whether a particular thing does or does not fall under a specified heading in the I.T.C. Schedule. Unless something is done which is clearly arbitrary, the court should not interfere in such a matter. The Customs authorities have held that this heading includes all kinds of camphor, of all grades and qualities. Therefore, synthetic camphor would be included. Coming to Appendix XIX of the lied Book, under which a licence has been granted, I have set out above the heading of the Appendix and it would be seen that the lists of drugs and medicines which would be covered by a licence must fall u/s Nos. 87 and 109 of Part IV. (We are not concerned with Part v. in this case) I have already pointed out how Section No. 87 is inapplicable, and it is conceded that Section No. 109 is the one to be applied. Section No. 109 clearly lays down that it relates to drugs and medicines of all sorts which are "not otherwise specified" in the Schedule. There is however a distinct heading, namely Section No. 131 which totally prohibits the importation of camphor. Assuming, however, that the terpine derivative which has been imported, is a drug or medicine, still it will come within the scope of Section No. 131 and, therefore, will be excluded from the scope of Section No. 109, because Section No. 109 expressly states that drugs and medicines which are dealt in another part of the Schedule would not come within its scope. Section No. 109 is a general item relating to drugs and medicines, but it does not exclude the operation of other serial numbers which deal with specific drugs or medicines. A consideration of the Section Nos. would show that this must be so. For example, drugs and medicines are allowed to be imported u/s No. 109, but u/s No. 114 alkaloids extracted from cinchona-bark, and their salts as such or in combination with pentaquinine phosphate are totally prohibited. Section No. 114 certainly deals with drugs and medicines. Since, however, there is a specific heading, it is taken out of the scope of Section No. 109. I do not see why the same reasoning should not apply to Section No. 131,

namely "camphor". Unless it is established that the goods imported cannot be called camphor, I do not see h''- " it can be taken out of Section No. 13.1, and once it comes un(sic) No. 131, how a licence relating to Section No. 10 covers (sic)rtation. Faced with this difficulty, Mr. Chaudhury (sic) on behalf of the Petitioner had to argue that the goods imported cannot be called camphor at all. In my opinion, this argument has failed. The argument really came to this that Section No. 131 related only to natural camphor and not any other kind of camphor. There is, however, nothing to show that this restricted meaning should be put on this serial number. I do not see how I have any jurisdiction to do so. As I have pointed out, whether it is natural camphor or synthetic camphor, the chemical composition is practically the same and since camphor as an item has been prohibited, it naturally follows that no kind of camphor either natural or synthetic could be imported. Mr. Choudhury in his reply referred me to an item in List III of the Appendix XIX namely "Bamboo camphor Banslochan". Nowhere in the petition or affidavit has this item been referred to, and it was only raised in reply. However, it is laid down in the appendix itself that items in List III were not covered by a general licence, but items in respect of which licence will be granted separately on each item on a quality basis. Then again, I do not know as to whether bamboo camphor is either natural or synthetic camphor. "Banslochon" is an Ayurvedic medicine, translated as "Bamboo camphor". Without further investigation it is impossible to say under what Section No. it has to be allocated. Reference has also been made to another entry in List III, namely,. Coral (unprepared) Purval mungi. This would also require a special licence and without further investigation it can not be said whether it would come u/s No. 11 in Part IV. None of these items were stated in the petition and it is of no use introducing then) by way of argument in reply, as it was sought to be done. Lastly, it must be remembered that Appendix XIX expressly relates to Section No. 109, which again is subject to any special item in the Schedule. From time to time, the policies in respect of these various items vary. Thus, in a particular period camphor may be allowed to be imported, in which case synthetic camphor, it is a drug or ''bamboo camphor'' if it is camphor at all, will be allowed to be imported. The difficulty however, is that during the particular licensing period we are concerned with in this case the importation of every kind of camphor was prohibited. I now come to the correspondence relied upon by the Petitioner to show that he has been misled by the authorities. Coming to the letter of the Assistant Drugs Controller dated 12th June, 1959 there is certainly a statement that camphor B.P. could be imported against a drug licence issued under Appendix XIX. But the Assistant Drugs Controller is not an official who has any statutory authority to interpret the Tariff Schedule, which interpretation would be binding on the Customs authorities. The drugs control department is certainly consulted in the case of importation of drugs and medicines. That, however, is to ascertain the nature of the imported, goods and to ensure that the drug or medicine imported is of the required quality. It. is no part of the duty of the Assistant Drugs Controller, to either assess the duty, or to give any interpretation of the Tariff Schedule, It seems that having written this letter, the correct position was realised and that is why on the July 3, 1959 the letter of June 12, 1959 and the contents thereof were hastily withdrawn and/or cancelled. It was pointed out that the proper authorities from whom the interpretation of the policy should be obtained were the Joint Chief Controller of Imports and Exports and the Assistant Collector for Appraisement. The learned Standing Counsel points out that even the Joint Chief Controller of Imports and Exports cannot, by an interpretation, bind the Customs authorities. It thus seems that there is no available machinery by which a correct interpretation could be obtained by an importer, in anticipation of his importation, where he has any doubts or difficulties on the question as to the heading in the I.T.C. Schedule to which a particular import should be allocated. Sometimes the difficulty is a real one. A slight difference in the nature of the goods might lead to a change in the allocation of the serial No. and in some cases there might be vast difference in the duty or else, as in the present case, the importation may be completely prohibited, with the result that the importation leads to all kinds of troubles and difficulties, when the goods arrive. It is highly desirable that some procedure should be laid down whereby an importer might be able to ascertain authoritatively the answer to such a question before committing himself to a commercial adventure. However, that is a matter of policy, and it is for the legislature to remedy the defect. I think that the learned Standing Counsel is right when he says that an interpretation made by the Assistant Controller of Imports cannot be binding on the Customs authorities for purposes of appraisement of customs duty, In any event, the letter dated 5th June, 1959 from the Assistant Controller of Imports is of no assistance to the Petitioner, because it really says nothing. All that he has stated in the letter is that "since camphor B.P. is stated to be a "derivative of terpine" the attention of Messrs. Arun and Company was drawn to a certain notice which dealt with the import of terpine and its derivative. This is no interpretation at all and even this letter was withdrawn later on. It would be pertinent here to point out that the Assistant Drugs Controller sent a letter; dated 3rd July. 1959 withdrawing his previous letter and on the very same day the indent was issued by Messrs. Arun and Company It is stated that the indent was issued earlier than the receipt of this letter, I have doubts. In the petition, a list of names has been given showing that several other parties who bad imported camphor B.P. were allowed to go unharmed, whereas the Petitioner had been singled out for discriminatory treatment. The fact is that the Assistant Drugs Controller had written certain letters, wherein he unfortunately rendered an interpretation which was neither authorised nor accurate. This must have been discovered and on July 3, 1959, the original letters were hastily withdrawn, or cancelled. Those who had made firm commitments prior to July 3, 1959, on the strength of such letters were dealt with leniently, because they had been misled into entering transaction by the unauthorised and erroneous interpretation of the Assistant Drugs Controller. These are the persons who had been mentioned in paragraph 22 of the petition. In the present case however it seems that -the indent came into existence on July 3, 1959, and not earlier, It was only on July 9, 1959 that the Petitioner received information of the acceptance of the order placed with the German firm and thereafter he opened an irrevocable letter of credit,. On July 3, 1959, Messrs. Arun and Company were clearly told by the Assistant Drug Controller as to from whom an authoritative interpretation should be obtained. Nothing was done about complying with the suggestion, but on the other hand, the transaction was proceeded with. The learned Standing Counsel argued that the Petitioner firm and Messrs. Arun and Company were the same. I have not sufficient materials before me to come to such a conclusion. It seems to me, however, that even after getting a warning, the transaction was rushed through and it cannot be fairly urged that the Petitioner was misled into doing something which he would not have done if he knew the facts correctly. In any event, I do not see how the question of being misled is relevant. Whether the importation of a particular material is authorised or not under the licence or to which Section No. the goods belong, is a question that has to be determined in accordance with the provisions of the law, and whether a person has been misled into entering into a transaction cannot have any bearing on the question. Although I have dealt with the merits of the case. I must not conclude without referring to an important aspect of the matter. The Customs authorities have a duty to appraise or determine the duty payable, ft has been held by the Supreme Court in Messrs. Gulabdas and Company and Anr. v. The Assistant Collector of Customs and Ors. (1958) S.C.A. 164, that it was for the Customs authorities to determine under the provisions of the Indian Tariff Act, 1934 or any of the provisions of the Sea Customs Act, 1878, what duty was payable in respect of articles imported. From its findings there are remedies by way of appeal. Unless the provisions relating to the imposition of duty are challenged as unconstitutional or the orders in question are challenged as being in excess of the powers given to the Customs authorities and, therefore, without jurisdiction, the courts ought not to interfere, and in particular, where facts are involved there can not be any investigation in an application for a writ, to find out whether such determination was correct or not. In other words, it is the duty of the Customs authorities to appraise goods for the payment of customs duty. Where they consider that certain goods have been imported under certain categories and, therefore, liable to a certain rate of duty, or where they consider the question as to whether certain goods are covered by the requisite licence, they are doing their statutory duty and unless the intention is mala fide, arbitrary or bad on the face of it, nothing can be done by the courts, and certainly no interference can be made by the issue of a high prerogative writ. In this particular case, the Customs authorities have carried out their duty, and I do not see that anything has been done arbitrarily or mala fide. It may be that there is scope for different views on the applicability of a particular Section No. in the I.T.C. Schedule. That however, is no ground for interference.

7. In the facts and circumstances of this case I am of the opinion that this Court ought not to interfere with the finding of the Respondent No. 1 and, therefore, this application should be dismissed. The Rule is discharged. Interim orders, if any, are vacated. There will be no order as to costs.

