

(1985) 02 MAD CK 0015

In the Madras High Court

Case No : Writ Petition No. 10138 of 1984

Jensen Enterprises

APPELLANT

Vs

Collector of Customs, Cochin and Another

RESPONDENT

Date of Decision : 18-02-1985

Acts Referred:

Customs Act, 1962 — Section 110, 110(1), 113, 113(1), 114(1)

Citation : (1986) 7 ECC 17 : (1985) 22 ELT 21

Hon'ble Judges : Ratnam, J

Bench : Single Bench

Advocate : Vijay Narayan, for the Appellant; P. Narasimhan, Senior Central Govt. Standing Counsel, for the Respondent

Judgement

Ratnam, J.—The petitioner is a registered partnership firm dealing in Indian Medicinal plants and herbs and in the course of its business, it

buys and sells within the country and also exports medicinal plants to foreign countries. On 10-6-1964, the petitioner despatched 52 bales of what

was described to be Vinca Rosea by road from Madras to Cochin for export from Cochin Port. This consignment was accompanied by a

Phytosanitary certificate issued by the Directorate of Plant Protection, Quarantine Storage, Department of Agricultural and Co-operation,

Government of India, and a certificate of the representative of the buyer showing that they had drawn samples from the consignment and had

inspected and sealed the consignment. After filing the necessary shipping bills, the consignment was presented for export and it was examined and

inspected by the Customs authorities on 23rd June, 1984 and a "Let Export Order" was passed by the Customs authorities. However, two days

later, the "Let Export Order" and the shipping bills were seized and the petitioner

was informed that the goods cannot be exported. On 12th July, 1984, the second respondent issued a show cause notice to the petitioner purporting to be u/s 174 of the Customs Act, 1962 (hereinafter referred to as the "Act") and this was served on the petitioner on 14th July, 1984. It was stated therein that as per technical opinion obtained on the basis of an examination of the samples, the consignment was found to consist of Vinoa Rosea and Rauwolfia serpentina root (a balanced item) and the petitioner was called upon to show cause why the consignment should not be confiscated u/s 113(d) of the Act for contravention of Section 3 of the Import and Export Control Act, 1947, read with clause 3(1) of the Export Control Order. A notice to show cause as to why a personal penalty should not be imposed under S. 114(1) of the Act was also given to the petitioner. Thereafter, on 27th July, 1984, before the petitioner could send a reply within the time mentioned in the notice, an addendum was served upon the petitioner which referred to a preliminary report received from the Professor of Pharmacognosy, Ayurveda Research Centre, Trivandrum, to the effect that a major quantity of the sample from the consignment consisted of Rauwolfia serpentina. In view of this, the second respondent stated that the petitioner contravened clause 3(4) of the Export Control Order, 1977, rendering the goods liable for confiscation u/s 113(1) and 113(d) of the Act read with Section 3 of the Import and Export Control Act, 1947. In the reply submitted by the petitioner on 10th August, 1984, it pointed out that the opinion furnished to it was not complete and after receipt of the same, it would submit all the relevant documents. On 27th August, 1984, the petitioner submitted a further representation and asked for the copy of the opinion obtained from the authorities cited in the show cause notice as well as the analytical report issued by the Professor of Pharmacognosy, Ayurveda Research Centre, Trivandrum. The petitioner also submitted that samples should be drawn and sent to one of the three recognised institutes maintained by the Government of India for the purpose of testing the consignment and submitting a report. The petitioner did not receive any reply to these representations made. Meanwhile, by an order served on the petitioner on 2nd August, 1984, the Assistant Collector of Customs, Export Documentation Centre (Customs), Cochin-9, had detained the goods u/s 110 of the Act, and

directed the petitioner not to remove or deal with the goods. Later, on 10th August, 1984, an order was served by the second respondent on the petitioner's clearing agent at Cochin and by his order, the order of detention was superseded and the consignment was seized u/s 110(1) of the Act. Thereupon, the petitioner moved the Kerala High Court in O.P. No. 7548 of 1984 to quash the order of seizure dated 10th August, 1984, and that petition is stated to be pending. Claiming that the petitioner was advised to resort to legal proceedings of a more comprehensive nature including a challenge to the proceedings taken u/s 124 of the Act, besides the order seizure, the petitioner has come up before this court for the issue to writ of certiorarified Mandamus calling for the records relating to the show cause notice issued by the second respondent, as amended by the notice dated 27th July, 1984, and the adjudication proceedings pursuant thereto and quash the same and directing the respondents to release the goods seized under the order of the second respondent, dated 10th August, 1984.

2. In the affidavit filed in support of the writ petition, though several grounds had been raised by the petitioner, in the course of the arguments before this Court, the petitioner confined its attack on the impugned orders to only one ground, namely, that the alleged violation committed by the petitioner in attempting to export goods contrary to the prohibition against export was without any basis or foundation, as the question whether the goods were prohibited or not is a matter on which the respondents should have entertained a reasonable belief that it was so at the time of seizure and such belief should have been present at the time of the issue of the show cause notice and further that during the course of adjudication, the proper officer must reach a conclusion that the goods were prohibited goods. The petitioner also maintained that the consignment did not contain any banned item and in order to ascertain this, requested the Court to draw samples, from the consignment and send the same to any one of the three recognised institutes mentioned in the source of the affidavit. The petitioner took the stand that the seized goods did not contain any banned item which cannot be exported, and therefore, the proceedings taken by the respondents on the footing that the consignment included banned items should be quashed as having been initiated without jurisdiction.

3. In W.M.P. 16314 of 1984 the petitioner prayed for a direction from this court to the respondents to draw samples in the presence of the

petitioner from the seized goods and submit the same for examination and analysis to the Central Research Institute for Siddha, Ministry of Health

and Family Welfare, Government of India, Arumbakkam, Madras-106,. By an order dated 16th November, 1984, this Court directed the

respondents to draw samples in the presence of the petitioner from the consignment within two weeks from that day and have the same sent to the

Central Research Institute for Siddha, Arumbakkam, Madras-106, for examination and submission of a report. Pursuant to this, the Central

Research Institute for Siddha, Arumbakkam, Madras-106, had submitted its report dated 2nd January, 1985.

4. In the counter affidavit filed on behalf of the respondent they justified the initiation of proceedings against the petitioner as well as the seizure on

the ground that there existed a reasonable belief that the consignment contained banned drug and that the report received from the Ayurveda

Research Centre, Trivandrum, and the other documents seized from the petitioner supported this. Adverting to the report of the Central Research

Institute for Siddha, Arumbakkam, Madras-106, the respondents stated that it was subject to scrutiny and ran counter to the incriminating

documents seized from the petitioner and that the samples from the seized consignment have to be submitted to examination and report by a third

institution.

5. Thus, the principal question is, whether the respondents could have entertained a reasonable belief that the consignment contained banned items

for purposes of export, and, therefore, were justified in having taken action and initiated proceedings in the manner done. While the petitioner has

been right through asserting that no banned items formed part of the consignment intended for export, the respondents have been maintaining that

the consignment contained *Rauwolfia serpentina*, a banned item, along with *Vinca Rosea*, a permitted item. In order to determine what the

consignment contained, the samples from the consignment were sent for purposes of examination, analysis and identification to the Ayurveda

Research Institute, Trivandrum-12. On 23rd July, 1984, the Professor of Pharmacognosy had addressed a letter to the second respondent herein

after a physical examination of the sample. In that letter, the Professor of Pharmacognosy has purported to identify from the anatomical features

roots of *Vinca Rosea* and *Rauwolfia serpentina* and has stated that thin stems with prominent nodes are that of *Vinca Rosea* and the slightly thicker

ones with inconspicuous nodes are that of *Rauwolfia serpentina*. The letter winds up by saying that an alcoholic extract of the contents of the two

plants which are very different can reveal more details, but that process would take about 7 to 9 days and that only thereafter a detailed report can

be forwarded. Subsequently, on 19th September, 1984, the Professor of Pharmacognosy, Ayurveda Research Institute, Trivandrum had

addressed another letter to the second respondent. Therein, it has been stated that the samples received from the Customs had been studied in

detail and compared with the original samples and that the specimen is identifiable as a mixture of root and stem of *Vinca Rosea* and *Rauwolfia*

canescens and that the majority of the roots were *Rauwolfia canescens*. It was also further reported that a fair quantity of stem of *Vinca Rosea* is

also present, though the sample packets were stated to contain roots of *Vinca Rosea* only. As against this, the report submitted by the Central

Research Institute for Siddha, established by the Central Council for Research in Ayurveda and Siddha, New Delhi, under the Ministry of Health

and Family Welfare, Government of India, stated that the specimen drawn from the consignment was studied for its macroscopic and microscopic

features and that revealed that the major portion consisted of *Vinca Rosea* stems and roots intact and broken pieces of roots and stems. The

remaining portion was found to contain stems identified as *Rauwolfia canescens*. Quantitatively it was found that the major portion of the plant

material was *Vinca Rosea* root and stem and stems of *Rauwolfia canescens* and no roots were found. Extensive chromatographic studies were

also made to confirm the identification of the plants as set out earlier. The thin layer chromatographic pattern report was also enclosed to show that

the identity of the plant material had been confirmed by comparison authentic samples.

6. Though in the first letter dated 23rd July, 1984, sent by the Professor of Pharmacognosy to the second respondent herein, an opinion had been

expressed that the major quantity of the samples contained *Rauwolfia serpentina*, the subsequent letter dated 19th September, 1984, sent by the

very same person clearly excluded the presence of Rauwolfia serpentina in the consignment and it stated that the specimen examined a mixture of

root and stem of Vinca Rosea and Rauwolfia canescens and the majority of roots was that of Rauwolfia canescens. From the letter dated 19th

September, 1984, it is clearly established that the sample did not contain Rauwolfia serpentina stated by the Professor of Pharmacognosy in the

letter dated 23rd July, 1984. It is, therefore, seen from the letter dated 23rd July 1984 and 29th September, 1984, that in the second letter the

Professor of Pharmacognosy has changed her opinion regarding the presence of Rauwolfia serpentina, which she had asserted in her letter dated

23rd July, 1984, and stated in her letter dated 19th September, 1984, that roots of Rauwolfia canescens were present. In both the letters dated

23rd July, 1984 and 19th September, 1984, it has not been stated that on what scientific investigation and basis, the identification had been made.

This assumes importance because in the report dated 2nd January, 1985 submitted by the Central Research Institute for Siddha, Arumbakkam,

Madras-106, the scientific investigation to which the samples were subjected to and finally identified have been clearly set out and the identification

had been confirmed on a consideration of the Thin Layer Chromotogrphic pattern. The report says that stems and not roots of Rauwolfia

canescens were found in the material sent for identification. In my view, the report dated 2nd January, 1985, sent by the Central Research Institute

for Siddha, Arumbakkam, Madras-106, sets out the scientific data on the basis of which the identification had been done and arrived at and,

therefore, that report deserves to be accepted in preference to the conclusions communicated in the letters dated 23rd July, 1984 and 19th

September, 1984, by the Professor of Pharmacognosy, Ayurveda Research Institute, Trivandrum-12. As noticed earlier, neither the methods

adopted nor the investigations carried out for the purpose of identification have been mentioned in those letters and, therefore, it is difficult to

accept the opinion expressed by Professor of Pharmacognosy, Ayuryeda Research Institute, Trivandrum-12, as a conclusive and binding one

based on a scientific analysis and identification. Besides, from the letter dated 23rd July, 1984, it is seen that the Professor of Pharmacognosy

presumably did a physical examination of the sample from the consignment and had opined that the major quantity found in the sample is that of

Rauwolfia serpentina, which was found to be not quite correct even according to her own subsequent communication dated 19th September,

1984. Further, the communication dated 19th September, 1984, referred to the presence of roots of *Rauwolfia canescens*, while the report

received from the Central Research Institute for Siddha is positive that no root of *Rauwolfia canescens* is found. The learned counsel for the

respondents strenuously contended that the samples should again be examined and identified by another Institute. I fail to see why it should be so

done. Merely because the report submitted by the Central Research Institute for Siddha is not favourable to the respondents, they cannot ask for

another examination. The Central Research Institute for Siddha has been established by the Central Council for Research in Ayurveda and Siddha,

New Delhi under the Ministry of Health and Family Welfare, Government of India. The identification of the plants in question had been done by

that institute after subjecting the specimen to macroscopic and chromatographic analysis and it is impossible to brush aside or ignore the report

submitted by it. It is, therefore, unnecessary to send the sample for a fresh examination by another institute, as submitted by the learned counsel for

the respondents. For the reasons already stated, I am inclined to accept the report of the Central Research Institute for Siddha regarding the

presence of *Rauwolfia canescens* stems only in the consignment in question. On a consideration of the reports referred to above, it is clear that the

consignment in question consisted of *Vinca Rosea* root stems, which is a permitted item, and stems of *Rauwolfia canescens*.

7. The learned counsel for the respondents referred to page 77, Schedule I of the Import and Export Policy. April, 1984 to March, 1985, Volume

II, to contend that *Rauwolfia canescens* would be a banned item. It is difficult to accept this contention, for, it is seen that the export of roots and

seeds of *Rauwolfia canescens* is not normally allowed. Stems of *Rauwolfia canescens* is not included under items not normally allowed to be

exported. Even as regards the roots and seeds of *Rauwolfia canescens*, a note is added to the effect that the regulation may be relaxed and export

permitted on obtaining certificates from certain officers to the effect that the material is plantation of nursery origin. When stems of *Rauwolfia*

Canescens do not find a place among items not normally allowed to be exported, there is no question of relaxing the regulations regarding the

export of that item, namely, the stems of *Rauwolfia canescens*. Accepting the report dated 2nd January, 1985, submitted by the Central Research

Institute for Siddha Arumbakkam, Madras-106, which has clearly set out the basis for the identification of the plants in the consignment, in

preference to that of the bald reports submitted by the Professor of Pharmacognosy, Ayurveda Research Institute, Trivandrum-12, it has to be

held that the consignment in question contained *Vinca Rosea* root and stem and stems *Rauwolfia canescens*. Since both these items are not banned

items, the seizure of the consignment on the ground that it contained banned or prohibited items is not in order.

8. The conflicting opinions regarding the contents of the consignment submitted by the professor of pharmacognosy, Ayurveda Research Institute,

Trivandrum and the Central Research Institute for Siddha, Arumbakkam Madras-106, have already been referred to. While persons fully

conversant with the characteristics of medicinal plants and their other properties and experienced in the identification of plants had expressed

conflicting opinions regarding the contents of the consignment seized, it is rather difficult to accept that the departmental officers, by merely looking

at the sample drawn from the consignments, were in a position to identify the plants as banned items. That would mean that at the time of seizure

the respondents could not have entertained a reasonable belief that the items are banned items merely by looking at the sample. There is also

nothing to establish that such a reasonable belief could have been entertained by the officers of the department at the time of the issue of the show

cause notice and also during the course of the adjudication that the goods were prohibited items. On the contrary, on the facts and circumstances

of this case, it is obvious that no reasonable belief at all could have been entertained by the officers of the department that the consignment

contained banned items. Under those circumstances, the basic requirements for the initiation of proceedings against the petitioner were totally

absent and, therefore, the action taken against the petitioner by the respondents was totally without any jurisdiction or justification. The learned

counsel for the respondents submitted that certain documents seized from the petitioner established that the petitioner had purchased *Rauwolfia*

serpentina, which is a banned item, for purposes of export. Even assuming that the petitioner had purchased *Rauwolfia serpentina* roots for

purposes of his business, so long as the consignment intended for export did not contain *Rauwolfia serpentina*, the respondents cannot claim on the strength of the documents stated to have been seized from the petitioner that he was engaged in exporting a banned item, from the contents of the seized goods, which admittedly did not contain *Rauwolfia serpentina*. A writ of certiorari of Mandamus will, therefore, issue quashing the notices issued by the second respondent on 12th July, 1984 as amended by the notice dated 27th July, 1984, and the adjudication proceedings pursuant thereto and directing the respondents to release the goods seized from the petitioner under the order of the second respondent dated 10th August, 1984. The rule nisi is made absolute and the writ petition will stand allowed. There will be, however, no order as to costs.