

(1984) 06 KL CK 0023
In the High Court Of Kerala
Case No : O.P. No. 4475 of 1984

Mysore Essential Oil Industries

APPELLANT

Vs

Collector of Customs

RESPONDENT

Date of Decision : 27-06-1984

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1985) 4 ECC 226

Hon'ble Judges : K.S. Paripoornan, J

Bench : Single Bench

Judgement

K.S.Paripoornan, J.—The petitioner purchased sandalwood from District Forest Officer, Sathyamangalam (Tamil Nadu), and District Forest Officer, Salem (Tamil Nadu). He converted them into "sandalwood heart chips" at his factory. Three certificates of origin were obtained by him from District Forest Officer, Chittoor dated 8th March, 1984, evidenced by exhibits P1, P2 and P3. They were verified and transit permits were granted by the District Forest Officer, Chittoor. They were physically verified by the Forest Range Officer, Kuppam. They were transported to Kerala for the purpose of export. The petitioner took steps for exporting the goods by the ship sailing to Taiwan. The foreign buyers of the petitioner had opened irrevocable letter of credit No. BD. 78379 dated 22nd March, 1984, with the Chartered Bank, Madras. The petitioner had applied for clearance order in form No. 2 as enjoined by Rule 3 of the Kerala Forest Produce Transit Rules of 1975 from the District Forest Officer, (Vigilance), Palarivattom. The sandalwood chips were kept in the godown of the shippers, M/s. D.B. Khona. The petitioner produced before the respondent, the Collector of Customs, Cochin, all necessary documents inclusive of clearance order for export in form No. 2 given by the Divisional Forest Officer, Palarivattom, under the Transit Rules, 1975, seeking permission to export the 8 tonnes of sandalwood chips to the foreign buyers. They were so submitted to the respondent on 18th April, 1984. It is alleged that they were brought to the port on 7th May, 1984, and the officers of the respondent took samples of sandalwood chips kept in bags. The

respondent did not take any step thereafter to permit the shipping of the sandalwood chips. It seems the appraising officer connected with the respondent expressed some doubts regarding the sandalwood chips sought to be exported to the shipping agent of the petitioner. The shippers addressed a communication exhibit P4 dated 9th June, 1984, to the Assistant Collector of Customs requesting him to inspect a few selected bags as a lot. The Deputy Collector of Customs personally inspected the goods on 17th May, 1984. Even then there is no action in the matter enabling the shipment of the goods. The respondents are purposely delaying the matter. The doubts expressed by the appraising officer and/or the respondent, as aforesaid, is due to a misapprehension and failure to understand the true scope and impact of Annexure II, Article 4 of the Import and Export Policy, April 1984--March 1985, Vol. II-- "Export Licensing". It is the contention of the petitioner that the "sandalwood heart chips" tendered by him for export is understood in the particular trade as "sandalwood chips". The petitioner is disabled from exporting the goods which has caused him irreparable injury. This is due to the refusal of the respondent to act in accordance with law. Therefore this O. P. was filed seeking for the issue of an appropriate writ or direction to compel the respondent to grant permission to the petitioner to export 8 tonnes of sandalwood chips brought to the dock and covered by clearance certificate given by D.F.O., Palarivattom, for export.

2. The respondents has filed a detailed counter-affidavit dated 25th June, 1984. In substance, the defence is that the goods offered for export did not fall under the description "chips" as envisaged by Annexure II paragraph 2 and Clause 4 of the Import and Export Trade Control Policy, relevant for the period April, 1984 to March, 1985, "Volume II Export Licensing", page 34. Annexure II deals with "the policy for export of wood and timber". Clause 2 states that for the purposes of export policy of wood and timber the following definitions will be adopted:

The policy for export of wood and timber shall be as under:

2. For the purposes of export policy of wood and timber the following definitions will be adopted:.

Clause 4 which is material for the purpose of the present proceedings is as follows:

4. Sandal wood in the form of dust, chips, flakes and powder will be allowed freely under OGL-3.

3. Counsel for the respondent, Shri. P.V. Madhavan Nambiar, reiterated the contentions raised in the counter-affidavit. It is argued that the certificate of the Forest Officers for the purpose of exporting sandal, is not a valid certificate in accordance with the customs practice or policy or rules and regulations. It is also stated that sandal chips are allowed to be exported freely under OGL-3 as per Annexure II, para. 4 of the Import and Export Policy, 1984-85. It is stated by the respondent that the goods brought to wharf are not sandalwood chips. It is further argued that "chips" is not defined under the Export Trade Control Policy.

So, the meaning to be given to the word "chips" is, as known in common parlance. This aspect of the matter has been highlighted in paragraphs 8, 15 and 16 of the counter-affidavit. So understood the instant goods tendered, which were inspected, were found to be not "sandalwood chips" and the plea of the petitioner is without force. The respondent justifies the view taken in this regard.

4. The crucial question posed is: What do the words, "sandalwood chips", occurring in Annexure II, Article 4 of the Import and Export Policy (1984-85) convey? What does it mean? What is the test to be applied? Is it dictionary meaning that is to be adopted; or should the words be understood, as in "common parlance"; or is it a technical word, to be understood, in a technical sense? The matter is not capable of a ready answer. The answer depends upon a variety of factors and requires investigation. The approach to the question involved, has not been made in a proper perspective or from a proper angle. The proper test to be applied has not been evaluated. It is true that for determining as to whether a particular item falls within a particular entry or not, or as to whether it is governed by a particular entry, the authorities have to find out on the basis of relevant facts, how it is understood in common parlance or in the commercial word or trade circle. This is the ordinary rule. In so doing one can refer to the dictionary. But, that will not prevail or be conclusive. This is so only if the relevant word used in the taxing statute is one of every day use. In that case alone, it must be construed as understood in common parlance and it must be given its popular sense, meaning thereby "that sense which people conversant with the subject-matter with which a statute is dealing would attribute to it. The test should not be applied as a "wooden rule" or "mechanically". The said rule is subject to variation in special or particular cases which calls for a different approach. If the Act is one passed with reference to a particular trade, business, or transaction, and the words are used by which everybody conversant with that trade, business, or transaction knows and understand to have a particular meaning, in those cases, the words are to be construed as having that particular meaning, though it may differ from the common or ordinary meaning of the words: vide *Unwin v. Hansan* (1891) 2 QB 115 at p. 119. I had occasion to deal with this matter in O.P. No. 997 of 1980. *Purushotham Goculdas Plywood Co. v. Union of India* [1985] 4 ECC 221 : 1983 KLT 21 Case No. 34 which is the test or approach to be adopted in this case? That aspect deserves scrutiny. The respondent did not bear in mind the various aspects involved in the matter nor has he adverted to the same. The said aspects are vital for reaching a proper and just decision in the case, Fairly heavy stakes are involved in this case. It is for the respondent to consider the matter more carefully in the light of the relevant principles of law laid down by Courts in this regard. From a reading of the counter-affidavit I am of the view that this has not been so done by the respondent and the view taken by the respondent that the goods offered for export are not covered by Article 4 in Annexure II has been arrived at solely on the basis of "common parlance" test and without proper advertence to relevant principles of law governing the subject-matter in construing the crucial entry in

Annexure II, Article 4.

5. The question as to whether the goods offered for export will come within Article 4 of Annexure II, is a mixed question of law and fact. Even the facts necessary to come to a correct conclusion have not been ascertained so far. It is neither expedient nor possible, for this Court at this stage to embark upon a detailed investigation of relevant facts and adjudicate the controversy between the parties. Proceedings under Article 226 of the Constitution of India are not normally the proper forum. Therefore, in the circumstances, the only course open to this Court is to direct the petitioner to place all oral and/or documentary evidence before the respondent within 7 days from today to substantiate the petitioner's plea that the goods that are to be exported will come within Annexure II, Article 4. It is open to the petitioner to file affidavits of persons who are engaged in the trade or who are dealing in the goods or other similar persons who are connected with the particular business. Within 7 days from the date of filing of the relevant evidence, oral and/or documentary, the respondent will pass a considered order in the matter and communicate the same to the petitioner. The Central Government Pleader, Mr. Madhavan Nambiar, fairly agreed that the matter will be expedited and in the light of the principles laid down herein and in *Purushotham Goculdas Plywood Co. v. Union of India* [1985] 4 ECC 221 : 1983 KLT 21 Case No. 34 (O.P. No. 997 of 1980), the respondent will adjudicate the point in controversy within seven days from the date of the filing of the relevant material before the respondent.

6. In the light of the above, no further direction is called for at this stage. If the petitioner is aggrieved by the final order that is likely to be passed by the respondent, it is open to him to pursue such remedies as are open to him in law. There shall be no order as to costs.

Issue carbon copies of this judgment to the counsel for the petitioner and to the counsel for the respondent on usual terms.