
(1983) 03 MAD CK 0065
In the Madras High Court
Case No : Writ Petition No. 20 of 1979

Polisettly Somasundaram (P) Ltd.

APPELLANT

Vs

Government of India

RESPONDENT

Date of Decision : 18-03-1983

Acts Referred:

Customs Act, 1962 — Section 20, 20(1), 28, 28(1)

Citation : (1984) 17 ELT 306

Hon'ble Judges : Nainar Sundaram, J

Bench : Single Bench

Advocate : G. Ramaswami, for Manivannan, for the Appellant; K.N. Balasubramaniam, for the Respondent

Judgement

Nainar Sundaram, J.—The prayer in the writ petition is to call for the records of the first respondent in proceedings No. 368-B/78 dated 21-12-1978, confirming the order of the second respondent made in C.S. 1889/76 dated 21-12-1976 and the order of the third respondent dated 17/18-8-1976 made in S. 30/9325/72Cr I, and issue a writ of certiorari to quash the same. The petitioner had approached this court under the following circumstances. A particular quantity of flue-cured virginia tobacco, weighing 20200 Kgs was brought from Guntur to Madras by the petitioner and it was exported under shipping bill No. 2762 dated 24-9-1971. The foreign buyers refused to take delivery of the goods as the tobacco was found to have funk. It is admitted before me that this expression "funked" indicates that the tobacco had deteriorated in quality and it could not be utilised for the purposes for which it was meant. This obliged the petitioner to re-import and after satisfying the requisite formalities, the tobacco was cleared from the Customs, transferred and re-warehoused at Guntur and in fact, the tobacco was sold to various third parties after processing and re-packing. On 1-10-1974, the third respondent issued a notice under S. 28(1) of the Customs Act (52 of 1962), hereinafter referred to as the Customs Act, calling upon the petitioner to show cause as to why a demand of customs duty amounting to Rs. 8,60,000 should not be enforced. The petitioner offered its explanation and in spite of it, the third

respondent determined the Customs duty payable as Rs. 8,08,000 by his order dated 7-5-1975. This was taken on appeal to the second respondent by the petitioner and the second respondent by order dated 12-8-1975, remanded the matter back to the third respondent since certain infirmities with reference to the compliance with the principles of natural justice were noticed. Pursuant to the order of remand, the third respondent considered the matter once again and by order dated 17/18-6-1976, confirmed the demand and the levy of Customs duty of 8,08,000. This order was again taken on appeal to the second respondent and the second respondent by order dated 21-12-1976, found no warrant for interference and the appeal was rejected. The petitioner took up the matter by way of a revision to the first respondent and the first respondent also, by order dated 16-12-1978 declined to interfere and the revision application was rejected.

2. There is no dispute before me that the demand and the levy against the petitioner have been made under S. 20 of the Customs Act, though the formal notice was issued under S. 28 of the Customs Act. It is true that no specific clause of the above provision has been referred to and relied on by the original authority, namely, the third respondent, but I find that when the matter was agitated further, the demand and the levy were sought to be sustained under clause (c) of the proviso to sub-section (1) of Section 20 of the Customs Act. Before me also, learned counsel for the respondents sought to sustain the levy only under the aforesaid clause. Before I advert to the implications of the said provision, and the construction which the learned counsel for the petitioner wants to put thereon in contrast to the construction which the learned counsel for the respondents would like to put thereon, I find it necessary to delineate certain facts which are not in dispute.

3. The original exportation has taken place under what is known as "Central excise bond" without payment of any excise duty. It is stated that the goods did not attract the levy of customs duty at the time of the exportation. On re-importation, the goods were allowed out of the Customs control after collecting the drawback originally allowed on the packing materials of the goods. The re-importation took place within three years after the exportation. On the aforesaid undisputed facts, let us examine the question as to whether clause (c) of the proviso to sub-section (1) of S. 20 of the Customs Act would be attracted at all. Section 20 of the Customs Act as a whole reads as follows -

"(1) If goods produced or manufactured in India be imported into India after exportation therefrom, such goods shall be liable to duty and be subject to all conditions and restrictions if any to which goods of the like kind and value not so produced or manufactured are liable or subject, on the importation thereof.

Provided that if such importation takes place within three years after the exportation of such goods and it is shown to the satisfaction of the Assistant Collector of Customs that the goods are the same which were exported, the goods may be admitted -

(a) in any case where at the time of exportation of the goods, drawback of any customs or excise duty levied by the Union or both was allowed, on payment of customs duty equal to the amount of such drawback;

(b) in any case where at the time of exportation of the goods, drawback of any excise duty levied by a State was allowed, on payment of customs duty equal to such excise duty leviable at the time and place of importation of the goods;

(c) in any case, where the goods were exported in bond without payment of -

(i) the customs duty leviable on the imported materials, if any, used in the manufacture of the goods, or

(ii) the excise duty leviable on the indigenous materials, if any, used in the manufacture of the goods, or

(iii) the excise duty if any leviable on the goods, on payment of customs duty equal to the aggregate amount of all such duties calculated at the rates prevailing at the time place of importation of the goods;

(d) in any other case, without payment of duty.

(2) for the purposes of this section goods shall be deemed to have been produced or manufactured in India, if at least twenty-five per cent of the total cost of production or manufacture of the goods has been incurred in India."

4. The matter has been prosecuted on the common hypothesis that the proviso to sub-section (1) of S. 20 of the Customs Act is attracted, since re-importation had taken place within three years after the exportation, and the goods were treated to be same as those exported. But the controversy is as to which of the clauses to the proviso should be invoked. Clause (a) of the proviso and clause (b) thereof are not stated to be attracted on the facts disclosed. Mr. G. Ramaswami, learned counsel appearing for the petitioner, submits that clause (c) also would not be attracted for the simple reason that the good were not exported under Customs bond and there is no dispute about this, and that clause could be invoked only where the goods were exported under the Customs bond and the learned counsel would state that matter could come only under clause (d) and in such a case, on duty is attracted on re-importation. As against this, Mr. K.N. Balasubramaniam, learned counsel for the respondents, submits that in the present case, the original exportation had taken place under Central Excise bond without payment of any excise duty and this is sufficient of attract clause (c) of the proviso to sub-section (1) of Section 20 of the Customs Act, and the expression "in bond" occurring in clause (c) would include exportation under Central Excise bond also.

5. The two statutes, namely, the Customs Act and the Central Excises and Salt Act, (1 of 1944,) are different. The Customs Act relates to levy and collection of Customs duties and the Central Excise Act relates to Central duties of excise and salt. It is admitted that with reference to warehousing bond, the two Acts and

the concerned rules lay down separate and distinct provisions to govern the same. The set of expressions "where the goods were exported in bond" occurs in clause (c) of the proviso to sub-section (1) of S. 20 of the Customs Act and in my view, it would not be in order to give it an extended meaning so as to include the Central Excise bond also. It is true that the word "bond" has not been defined under the Customs Act. But the lack of definition cannot afford a ground to give an extended meaning to that expression. In the absence of an express provision giving such an extended meaning in the Customs Act itself, it will be proper to confine the meaning of the expression "in bond" to the Customs bond alone. It may not be necessary to cite any authority on this question, for we can take it as a well accepted proposition of construction of statutes, that words occurring in a particular statute should be interpreted and construed only with reference to that statute where they occur, unless a different intention is clearly expressed. The words of a statute, when there is a doubt about their meaning, are to be understood only with reference to the subject of the enactment. There is yet another principle which would not be lost sight of. "Statutes which impose pecuniary burdens are subject to the rule of strict construction. It is a well settled rule of law that all charges upon the subject must be imposed by clear and unambiguous language, because in some degrees, they operate as penalties; the subject is not to be taxed unless the language of the statute clearly imposes the obligation, and language must not be strained in order to tax a transaction which, had the Legislature thought of it, would have been covered by appropriate words." "In a taxing Act" - "one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used." (See Maxwell on the Interpretation of Statutes - 12th Edn., page 256). In other words, taxation to be effective must be imposed by unequivocal and unambiguous expressions. In interpreting a fiscal statute, the Court cannot proceed to make good the deficiencies, if there be any, and the court must give the meaning to the words in the statute with reference to that statute alone and in case of any doubt, the doubt must be resolved in favour of the tax payer. When the words used in a statute are capable of two interpretations, one in favour of the taxing authority and the other in favour of the subject, the latter interpretation must hold the field. The Court is not bound to fill up the deficiencies and rectify the legal in artistry in the use of the language in the statute. If these principles are applied, I am nor able to sustain the demand and the levy of the duty as made by the respondents, admittedly invoking the aid of clause (c) of the proviso to sub-section (1) of S. 20 of the Customs Act; and if so, naturally the matter could be brought only within the purview of clause (d) of the proviso to sub-section (1) of S. 20 of the Customs Act, as submitted by the learned counsel for the petitioners. On the other hand, learned counsel for the respondents is not in a position to demonstrate and sustain any convincing reason to construe the expression "in bond" occurring in clause (c) of the proviso to sub-section (1) of S. 20 of the Customs Act, so as to denote, connote and include the Central

Excise bond. This obliges me to interfere in writ proceedings.

6. In the result, the writ petition is allowed. But there will be no order as to costs.