

(1992) 11 DEL CK 0005

In the Delhi High Court

Case No : Civil Writ Appeal No. 2271 of 1992

Polyglass Acrylic Mfg. Co. (P) Ltd. and Another

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 11-11-1992

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1992) 24 DRJ 626

Hon'ble Judges : P.N. Nag, J;D.P Wadhwa, J

Bench : Division Bench

Advocate : P. Chidamabaram, R.K. Garg and Madan Lokur, for the Appellant;

Judgement

D.P. Wadhwa, J.

(1) Though there are four respondents, it is not clear as to against which respondent the petitioners seek these writs or orders as in the prayers the word "respondent" is used. The four respondents are: (i) Union of India, through the Secretary, Ministry of Finance, Government of India, Revenue Department, New Delhi; (ii) the Chairman, Central Board of Excise and Customs, New Delhi; (iii) the Collector of Customs, Chandigarh and (iv) the Assistant Collector of Customs, Ludhiana. We may also note that the second petitioner is the director of the First petitioner, accompany registered under the Companies Act, 1956, having its registered office at Panchkula in the State of Haryana, where it has also its manufacturing Unit. In the title to the petition, the petitioners did not state that the registered office of 1st petitioner was in the State of Haryana. It is only mentioned that the company was carrying on the business at New Delhi.

(2) The Container Freight Station (CFS) is at Ludhiana, where the goods arrived for clearance under the Customs Act, 1962 (for short "the Act"). The petitioners say that they have entered into a contract with a London firm for supply of 1500 M.Ts. of Acrylic Plastic Sheet pieces at the rate of Us \$ 240.00 per M.T. The contract was entered into on 15.5.1991. On this contract, the foreign supplier on

15.2.1992 consigned goods weighing 19024.00 Kg. at the rate of U.S. \$240.00 per M.T. and the same were cleared by the 4th respondent. Another consignment weighing 18389 Kg. at the same rate was also supplied on 12.3.1992 and the 1st petitioner on arrival of the goods at the C.F.S. Ludhiana filed the Bill of Entry on 6.5.1992 for clearance of the goods for the home consumption. It is contended that the Customs Department examined the goods and found the same to be in order as per invoice but still refused to clear the goods for home consumption u/s 47 of the Act when the same goods had also been cleared earlier at the same value. It is contended that since the 4th respondent did not take any action in the matter, this led to the Filing of the present writ petition on importers have also been cleared at the contract value.

(3) This matter was first taken up before the Vacation Bench of this Court on 24.6.1992, when notices were issued both on the petition as well as on the application seeking interim relief for clearance of the goods on the basis of invoice value i.e. U.S. \$ 240 per M.T, 4th respondent has since filed its answer to show cause and reply to the application seeking interim relief. He has submitted that there was no basis for the petitioner to rush to this Court inasmuch as this jurisdiction, if any, lay with the High Court of Punjab & Haryana at Chandigarh, where the office of the 4th respondent is situate. Another contention raised is that the Customs Act is a complete Code in self respecting the matter under consideration in this petition. It is submitted that valuation of the goods for purposes of assessment is to be made u/s 14 of the Act and u/s 47 where the proper officer is satisfied that any goods entered for home consumption are not prohibited goods and the importer has paid the import duty, if any, assessed thereon and any charges payable under the Act, the proper officer may make an order permitting clearance of the goods for home consumption. Then there is a right of appeal as provided u/s 28 of the Act to the Appellate Collector if the person is so aggrieved and further appeal is provided to the Appellate Tribunal (C.E.G.A.T.). Still reference may be made to the High Court on any question of law arising out of the order of the Appellate Tribunal u/s 130 of the Act. Then the 4th respondent says that when the Bill of Entry was filed, certain quarries were raised but the petitioner failed to reply to the same. 4th respondent then addressed a letter dated 27.5.1992 to the 1st petitioner requiring it to reply to the quarries raised by the Appraiser which had been raised on the reverse of the Bill of Entry on the very day of its filing. It is also stated in this letter that since no reply was forthcoming, clearance of the goods could not be ordered. It was also mentioned in this letter by the 4th respondent that "the retrieval of value data from other ports reveals that similar goods are being imported at a much higher price at other ports in comparison to unit price of U.S.\$ 240 P.M.T. declared by you. That is why you were requested to produce manufacture invoice in order to enable us to arrive at correct assessable value under the provision of the Customs Act. You are requested to reply immediately to the quarries already raised so that assessment can be finalised.

(4) Yet the petitioner did not send any reply and rushed to this Court to file this

petition. Nothing has been mentioned in the petition as to how respondents 1 and 2 have been imp ledged in this petition. Mr.Chandiambrm, however, referred to the rejoinder filed by the petitioners, wherein a certain para of counter affidavit filed by the Customs Authorities in some other writ petition was quoted. In this it was stated that certain intelligence had been gathered for the valuation and the imported goods valued much more than what was declared by the parties and that intelligence was passed on to the 4th respondent at Ludhiana as well. This certainly cannot give jurisdiction to this Court when the authority whose action is affected is not amenable to the jurisdiction of this Court. It is the 4th respondent who is not allowing the clearance of the goods. We fail to see as to how this Court would have jurisdiction in the matter.

(5) MR.CHIDAMBRAM, however, stated that in various other similar matters another Bench of this Court while issuing Rule directed clearance of the goods of similar nature at the value of Us \$280 per M.T. and required the petitioners therein to execute the bond for the difference between Us \$280 and Us \$400 per M.T. These are all interim orders. Mr.Chidambram also referred to us the judgment dated 8.9.1989 of this Court in Civil Writs No.2732 and 2765 of 1992, wherein Rule D.B. was issued and at the same time made absolute with the following observations:-

"Keeping in view the facts narrated hereinafter above, we order that the petitioners be allowed to clear the goods on deposit of customs duty on the value calculated at Us \$280 P.M.T. and on executing P.D.Bond for the difference between Us \$475 and -US \$280 P.M.T., and in addition the petitioners shall not create a second charge against their respective factories mentioned hereinabove, nor they shall alienate or transfer or part with the possession in respect of their factories till the final decision in the matter by the authorities under the statute. The orders regarding the release of the goods mentioned hereinabove shall, however, be subject to the final decision of the matter under the statute."

(6) But the points which have been raised in these proceedings i.e. about the jurisdiction of this Court as well as remedies available under the Customs Act, we find that they have not been considered in that judgment. We do not find any error of jurisdiction exercised by the 4th respondent in raising quarries in order to arrive at the correct valuation of the goods imported for the purposes of assessing the duty thereon.

(7) Mr. Madan Lokur, Central Government Standing Counsel submitted that not only that the value of the goods in question was more than Us \$ 400 per M.T. but he showed us the .Bill of Entry of March, 1992 for clearance of similar goods filed in Bombay where the value declared is over U.S. \$ 800 per M.T. He stated that it was the duty of the proper officer to assess proper value as per law and if the petitioner was aggrieved, he had other remedies under the Act. He referred to the decision of the Supreme Court in Union of India (UOI) Vs. A.V. Narasimhalu, , where the Supreme Court made a pointed observation that the Sea Customs Act, 1878 was a complete Code dealing with the liability to pay

customs duty and for obtaining relief against excessive or erroneous levy and other related matters. These observations apply to the present Act as well. Mr. Lokur then stated that the present petition was wholly misconceived.

(8) It cannot be disputed that the petitioners have remedies under the Act if they are aggrieved by any order putting excessive valuation on the imported goods. In view of the observation of the Supreme Court in the case of A.V. Narasimhalu (Supra), we so no reason how we can interfere in the matter. We do not find any jurisdictional error on the part of the authorities under the Act for this Court to interfere in the exercise of extra ordinary jurisdiction under Article 226 of the Constitution. We do not think that it was proper on the part of the petitioners to file this petition in this Court. We, Therefore, dismiss the petition in liming.