

(1987) 03 DEL CK 0018

In the Delhi High Court

Case No : Civil Writ Petition No. 1425/83

Punjab Dairy Development Corporation Ltd.

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 10-03-1987

Acts Referred:

Citation : (1987) 12 ECC 135 : (1987) ILR Delhi 93

Hon'ble Judges : B.N. Kirpal, J

Bench : Single Bench

Judgement

B.N. Kirpal, J.—In this petition filed under Article 226 of the Constitution the Challenge is to the action of the respondents in not releasing the goods which had been imported and also to the levy of redemption fine and Customs duty on the said goods.

2. The petitioner is an undertaking of the Punjab State Government. The Canadian Hunger Foundation, Canada and one Canadian of India origin gifted machinery and equipment to the State of Punjab for setting up an exotic cattle breeding farm at Ropar.

3. The then Chief Minister of Punjab wrote a letter dated 7th January 1976 to the Union Ministry of Finance requesting for an order being passed u/s 25(2) of the Customs Act, 1962 for exemption from payment of Customs duty. Pending decision on the request of the State Government, the Central Government permitted provisional duty-free clearance of the machinery and equipment on an undertaking being given by the State Government that in the event of the duty being chargeable the small shall be paid.

4. The machinery and equipment arrived at Bombay and were cleared by the petitioner in February, 1976 and the same was transported to plant premises at Chandigarh and Ludhiana. In April, 1976 the officers of the Central Excise Collectorate, Chandigarh, found certain discrepancies in the goods which were found at the petitioner's premises and with the details given in the Customs

Clearances Permit (CCP) and the Bill of Entry. The goods so imported were accordingly seized. A show cause notice dated 4th October, 1976 was issued alleging contravention of the provisions of the Customs Act and the Import Trade Control Regulations. The goods are categorised into three categories and the allegation was that the petitioner had (a) under-declared the value of goods cleared under the CCP and Bill of Entry to the extent of Rs. 5,01,737.74; (b) unauthorisedly imported farm/dairy machinery/equipment to the extent of Rs. 9,21,165.79; and (c) unauthorisedly imported goods other than farm and dairy machinery/equipment to the extent of Rs. 96,663/- against prohibition and restrictions.

5. The petitioner filed a reply to the show cause notice. The Collector of Customs, Bombay vide his order dated 24th/29th October, 1977 ordered confiscation of all the aforesaid goods with an option to redeem only the goods mentioned in categories (a) and (b) above on redemption fine of Rs. 1.25 lakhs and Rs. 4.60 lakhs respectively.

6. An appeal was filed against the aforesaid order to the Central Board of Excise and Customs, New Delhi. The impugned order was upheld by the Board with the modification that the redemption fine of Rs. 1.25 lakhs was reduced to Rs. 1 lakh.

7. The petitioner then filed a revision application before the Government of India. The Central Government vide its order dated 30th March, 1981 partly allowed the revision application and was pleased to order as follows :-

(1) Release of certain goods without any redemption fine. These would be referred to as Category "A" goods.

(2) Release of certain other goods (referred to as Category "B" goods) valuing Rs. 5,01,325.79 under a fresh CCP, if obtained, and in the alternative on a redemption fine of Rs. 1.20 lakhs.

(3) Absolute confiscation of the balance impugned goods (referred to as Category "C" goods).

In pursuance of the aforesaid order, in revision the petitioners contended that they paid the redemption fine of Rs. 1.20 lakhs in case of goods which were placed in category "A". The petitioner, however, claimed exemption from payment of Customs duty. This exemption was refused and in respect of Category "A" the petitioner is stated to have paid duty of Rs. 4,73,475/- on 25th February, 1983. It appears that there was a delay by the respondents in presentation of the cheque for Rs. 4,73,475/- and when the same was not encashed, a bank draft for the said amount was handed over to the respondents. Counsel for the respondents is unable to inform the Court whether the aforesaid amount of money has been realised or not, but if payment has been made by bank draft, I see no reason why the said amount would not have been realised and in fact, if realisation had not been effected, the petitioners would have been informed accordingly.

8. With regard to the petitioner's claim for exemption from payment of Customs duty u/s 25(2) of Customs Act, the Government of India vide its order dated 9th November, 1981 refused to grant the exemption prayed for. Thereafter, the writ petition has been filed in which the petitioner has prayed for exemption from payment of Customs duty, quashing of the imposition of redemption fine and for release of the goods.

9. The first submission of the petitioner before me was that the Central Government ought to have exercised its power u/s 25(2) of the Customs Act and granted exemption from payment of duty. Section 25(2) reads as follows :-

"25(2). If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by special order in such case, exempt from payment of duty, under circumstances of an exceptional nature to be stated in such order, any goods on which duty is livable "

10. Mr. Sanghi, learned counsel for the respondents has placed before me the file containing the decision of the Central Government with regard to the grant of exemption u/s 25(2). The perusal of the file shows that the policy of the Government is to grant exemption in exceptional and rare cases where the goods which are imported are meant for distribution free of cost or at a subsidised price. The goods which were imported in the present case did not fall into any of these two categories. It was noted that the goods imported were those which fell under the category of producer goods and, Therefore, there was no reason as to why exemption asked for u/s 25(2) should be accorded.

No party has a right to ask for exemption u/s 25(2). Whether the exemption is to be granted or not is to be the decision of the Central Government. Of course, this power is to be exercised fairly and judiciously and in terms of the provisions of the said Section 25(2). No fault can be found with the reasoning of the Central Government in the present case for denying exemption to the petitioner. The petitioner, with the help of the imported plant and machinery, is going into a commercial venture. The dairy produce is not intended to be distributed free of cost or at subsidised rates. It is true that the equipment was gifted to the petitioner and furthermore, the petitioner is a State Government undertaking, but the case of the petitioner for the grant of exemption did not fall within the norms set for itself by the Central Government. The rejection of the petitioner's application for grant of exemption u/s 25(2) can neither be called arbitrary nor discriminatory. The decision of the Central Government contained in its letter dated 9th November, 1981 has, Therefore, to be upheld.

11. It was then contended by the learned counsel for the petitioner that with regard to the goods falling in Category "A" the duty having been paid under protest, there was no reason whatsoever for the goods not being released. This submission of the petitioner is unanswerable. It is indeed a pity that goods which were gifted to this country eleven years ago, and that also to a State undertaking, have not been put to use till today. It is the nation which has lost

due to the quibbling between the parties. There is no reason as to why the Customs authorities could not have proceeded with their adjudication while at the same time allowing the goods to be used by the State Government undertaking. Had it been a private organization which was the recipient of the goods it would have possibly acted more promptly and would have seen to it that the goods were released at an early date. In the present case, there seems to have been a lethargy on both the sides, namely, the petitioner as well as the respondents. Even after having received the Customs duty four years ago, till today goods in Category "A" have not been released by the respondents. It was only because the officers concerned feel that no action will be taken against them that has resulted in the said plant and machinery continuing to lie where it is at present. This is, of course, on the assumption that all the items still exist there and they have not been pilfered or done away with. This is a case of criminal neglect on the part of the authorities concerned and it would be a fit case where the department should take appropriate action against the delinquent officers.

12. With regard to the goods falling in Category "B", the contention of the learned counsel for the petitioner is that no Customs duty is payable. It is submitted by him that on a correct interpretation of Section 125 of the Customs Act read with Section 2(25) and 2(30), the redemption fine on imported goods as defined in Section 2(30) cannot exceed market price less Customs duty. In case of goods other than imported goods, it is submitted, the redemption fine cannot exceed the market price. It was, Therefore, sought to be contended that "while in case of imported goods duty will be separately payable at the time of clearance of goods on payment of redemption fine, and so much duty is payable on the goods other than imported goods on payment of redemption fine which will be deemed to have the component of duty incidence in the redemption fine which will not exceed the market price". Simply stated, the contention of the counsel for the petitioner is that the goods in question were not imported goods, because the goods had crossed the barrier after importation from abroad without payment of duty and had got mixed in the mass of goods for home consumption. It was then contended that u/s 125 the redemption fine which is to be imposed must necessarily include the element of Customs duty and, Therefore, the fine of Rs. 1.20 lakhs in the present case must be deemed to include the Customs duty.

13. The argument of the learned counsel for the petitioner is, to say the least, far fetched. Section 125 gives an opportunity for the payment of redemption fine in lieu of confiscation. The said section reads as follows :-

"125. Option to pay fine in lieu of confiscation. -

(1) Whether confiscation of any goods is authorised by this Act, the Officer adjudging it may, in the case of any goods the importation of exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods give to the owner of the goods an option to pay in lieu of confiscation such fine as the said officer thinks fit;

Provided that, without prejudice to the provisions of the proviso to sub-section (2) of Section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

(2) For the removal of doubts it is hereby declared that any fine in lieu of confiscation of goods imposed under sub-section (1) shall be in addition to any duty and charges payable in respect of such goods."

Section 125 clearly states that the redemption fine which is payable is in addition to and independent of the Customs duty which is chargeable. The redemption fine which an importer is asked to pay can never include the element of Customs duty. What the proviso to Section 125(1) says is that in computing the amount of redemption fine the amount of Customs duty payable is to be excluded therefrom. The redemption fine which an importer can be asked to pay is not to exceed the market price of those goods. The proviso to Section 125(1) provides that not only is the redemption fine not to exceed the market price of the goods but from the market price the Customs duty which is chargeable is to be deducted. In other words, the sum total of the Customs duty and the redemption fine is not to exceed the market price of the goods. The section nowhere postulates or provides that the redemption fine which is determined as being payable would include therein the Customs duty payable on those goods. In fact, sub-section (2) of Section 125 leaves no manner of doubt that the redemption fine is to be in addition to the Customs duty which is payable. As I read Section 2(25), it is apparent that those goods which have been cleared for home consumption on payment of Customs duty is not included within the purview of the expression "imported goods". Other goods which are imported from abroad and which have not been cleared for home consumption have necessarily to be regarded as imported goods on which Customs duty, if leviable, would be payable. In the instant case, the goods were imported from abroad and provisional duty-free clearance was permitted on the condition that if exemption u/s 25(2) is not granted, then duty will have to be paid on the goods so imported. It has so happened that two of the categories of the goods which were imported did not have a valid CCP. Therefore, their importation was not in accordance with law. Redemption fine is payable because the import was illegal. Payment of redemption fine has nothing to do with the payment of duty as such. Liability to pay the duty arises the moment the goods were imported into India and crossed the Customs' barrier. Therefore, even with regard to Category "B" goods Customs duty was payable but because the import of the said goods was not valid, redemption fine was also levied thereon. This redemption fine cannot and does not include the element of Customs duty. In this connection reference may also be made to the decision of the Madras High Court in the case of *The Collector of Customs Vs. H.S. Mehra*, . That case arose under the provisions of Sea Customs Act, and it was held that when in lieu of confiscation fine is imposed, then the importer exercising the option and getting the goods released has to pay duty on the goods over and above the fine which is imposed. It was held in that case that the property continues to remain that of the importer and,

Therefore, he will be liable to pay Customs duty as being the person who has imported the goods. This judgment was approved and followed by the Supreme Court in the case of Union of India (UOI) and Others Vs. Security and Finance (P) Ltd., .

14. Learned counsel for the petitioner, however, contended that in case of town seizure the aforesaid decision will have no application. He drew my attention to a letter dated 3rd November, 1979 written to the Government of India, in another case, in which it was stated on behalf of an applicant that no Customs duty is payable on the goods pertaining to town seizure because the point of payment of Customs duty is the point at which the goods entered into India. In reply to that the Senior Technical Officer of the Government of India wrote that the necessary instructions had been issued to the Superintendent to release the goods on payment of redemption fine without payment of Customs duty. I am unable to see the legal sanction or authority behind such a decision. If goods had been imported into India, then by operation of law they attract Customs duty. Even if the goods have gone past the Customs" barrier without payment of duty, it does not mean that the liability to pay duty has come to an end. The concept of "town seizure" in any case, even if it is assumed to be valid, does not arise in the present case. The petitioner was allowed to clear the goods on provisional exemption from payment of Customs duty. If the provisional clearance had not been granted, the petitioner would have been asked to pay Customs duty in addition to the redemption fine at the time of clearance. The petitioner cannot be absolved of payment of Customs duty merely because provisional clearance was allowed on the petitioner's undertaking to pay the Customs duty, if there was no exemption granted u/s 25 of the Customs Act. In the present case such an exemption having been refused, the liability to pay the duty clearly arises and this liability is in addition to the payment of redemption fine. In this view of the matter, the petitioner is liable to pay the Customs duty on goods falling in Category "B". The petitioner has already paid the redemption fine of Rs. 1.20 lakhs. On petitioner paying the Customs duty on Category "B" goods, he would be entitled to the forthwith release of the goods falling under the category. As regards goods falling under Category "C" which have been ordered to be confiscated as the import of those category is banned, the learned counsel for the petitioner is unable to impugn the decision of the Central Government in respect of the said items.

15. From the aforesaid discussion it follows the petitioner is liable to Customs duty in respect of the items falling under Categories "A" & "B". The petitioner has already paid redemption fine of Rs. 1.20 lakhs in respect of Category "B". The petitioner also, presumably, has paid Customs duty in respect of Category "A" and will pay Customs duty in respect of Category "B". The amount of Customs duty in respect of this category has still not been assessed. I accordingly issue a Writ of Mandamus directing the respondents to assess the Customs duty in respect of items falling under Category "B", if not already assessed, within four weeks from today. On the said Customs duty being

assessed, the same will be paid by the petitioner within three weeks thereafter and the goods shall be released within a week of the payment of the Customs duty.

16. With regard to the goods falling under Category "A" I issue a Writ of Mandamus directing the respondents to release the goods to the petitioner within two weeks from today. No other relief is asked for or granted. In view of the fact that there has been undue delay in the release of items falling under Category "A", even after the payment of Customs duty by the petitioner, the petitioner would be entitled to costs, assessed as Rs. 1,000/- which shall, initially be paid by respondent No. 1, who would be entitled to recover the said costs from those officers who were responsible for not releasing the said machinery.