(1979) 02 KL CK 0009

In the High Court Of Kerala

Case No : O.P. No. 1075 of 1977 J

P.V. Albin APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 02-02-1979

Acts Referred:

Customs Act, 1962 — Section 11, 11(2), 113, 113(1), 114
Export (Quality Control and Inspection) Act, 1963 — Section 6, 7, 7(3)
Imports and Exports (Control) Act, 1947 — Section 3(2)

Citation : (1979) CENCUS 489 : (1988) 36 ELT 262

Hon'ble Judges : T. Kochu Thommen, J

Bench : Single Bench

Judgement

T. Kochu Thoman, J.—The petitioner is the Managing Partner of a firm of exporters of (sic) Assistant Collector of Customs, Cochin (4th respondent) calling upon the exporters to show cause why proceedings should not be initiated against them for contravention of the Notification (No. Se. 771 dated 6.3.1965), (as amended) issued u/s 6 of the Export (Quality Control and Inspection) Act, 1963 (hereinafter referred to as the ''Quality Control Act''), why their goods should not be confiscated under Sections 113 and 118(b) of the Customs Act, 1962, and why penalty u/s 114 of the Customs Act should not be imposed upon them. Ext. P2 reply was sent by the exporters but their explanation as rejected by Ext.P3 order of the Collector of Customs (the 3rd respondent herein). The Collector held that the prohibition contained in the notification issued u/s 6 of the Quality Control Act was violated and that the goods were therefore liable to be confiscated. He however gave the exporters an option to pay a sum of Rs. 12000/- in lieu of confiscation. The Collector further imposed a penalty of Rs. 20,000/- on the exporters u/s 114 of the Customs Act. Against this order an appeal was filed before the Central Board of Excise and Customs. The Board by Ext.P6 order confirmed the confiscation, but reduced the penalty from Rs. 20.000/- to Rs. 10.000/-. A revision filed before the Secretary to the Government of India, Ministry of Finance (Department of Revenue and

Insurance), was dismissed by Ext. P8 order. The petitioner challenges Exts. P1, P3, P6 and P8.

2. Certain facts are not controverted. The goods in question were brought to the Customs Wharf under a valid certificate issued by the Export Promotion Agency (here in after called the ''Agency'') which is the competent authority under the Quality Control Act. There is no case that the certificate was issued on any misrepresentation or that pry fraud had been committed by the exporters. There is also no case that the exporters made any wrong declarations or that then knowingly brought damaged goods to the Customs Wharf.

3. At the Wharf the Customs authorities noticed defect in the goods. The Agency was therefore called upon to conduct a fresh examination. The Agency found that the goods were not export worthy. It was on the basis of such findings that the Customs authorities issued Ext. P1 notice.

4. I may at the outset point out that the only offence alleged to have been committed by the exporter is violation of the prohibition contained in the Notification issued u/s 6 of the Quality Control Act. Confiscation was ordered solely on the basis of Section 113(d) and Section 118(b) of the Customs Act. Although Section 11(2)(h) was mentioned in Ext. P1 notice, it appear to have been given up in the orders subsequently passed. There is no reference to Section 113(1) or Section 50 of the Customs Act. The power vested in the authorities by virtue of Clause 10A of the Exports (Control) Order, 1969 read with the provisions of the Import and Export (Control) Act, 1947 does not appear to have been invoked.

5. I shall now refer to the provisions of law relied on by the department in support of the impugned orders. The object of the Quality Control Act is the sound development of the export trade. An agency competent to issue quality control certificate has been set up under the Act. The notification issued by the Government u/s 6 of the Act prohibits the export of notified goods without a valid certificate. Section 6 of the Quality Control Act reads as follows :-

6. "Powers of the Central Government in regard to quality control and inspection. - If the Central Government, after consulting the Council, is of opinion that it is necessary or expedient so to do for the development of the export trade of India, it may, by order published in the Official Gazette,

. . .

(d) prohibit the export in the course of international trade of a notified commodity unless it is accompanied by a certificate issued under S. 7 commodity satisfies the conditions relating to quality control or inspection, or it has affixed or fiction applicable to it under Clause (c)."

Clause (d) refers to a certificate issued u/s 7 of the Act. Section 7 provides for examination of the goods by the agency. If the agency is satisfied as to the quality of the goods they may issue a certificate to that effect. Section 7(3) reads as follows :-

"If, after the examination, the agency is of opinion that the commodity satisfies the standard specifications laid down in respect of It u/s 6 or, as the case may be, any other specifications stipulated in the export contract, It may issue a certificate that the commodity satisfies the conditions relating to quality control and inspection."

In the instant case it is not denied that the goods in question were covered by valid certificates and that it was under such certificates that they reached the Wharf. These certificates were evidence as to quality, and the goods covered by them were presumed to be export-worthy. The presumption disappears only when, upon a subsequent examination, it is found that the goods are in fact not export-worthy.

6. It is possible that even in the case of goods which were certified to be of proper quality, an exporter can be penalised in cases where he knowingly makes a wrong statement as to the quality of the goods. Section 50 of the Customs Act, 1962 requires the exporter to make a statement as to quality. It reads :-

"50. Entry of goods for exportation.-(1) The Exporter of any goods shall make entry thereof by presenting to the proper officer in the case of goods to be exported in a vessel or aircraft, a shipping bill, and in the case of goods to be exported by land, a bill of export in the prescribed form.

(2) The exporter of any goods, while presenting a shipping bill or bill of export, shall at the feet thereof made and subscribe to a declaration as to the truth of the contents".

Section 113(1) of the Customs Act provides for confiscation of

"any dutiable or prohibited goods which do not correspond in any material particulars with the entry made under this Act or in the case of baggage with the declaration made u/s 77 in respect thereof.

Again, clause 10A of the Exports (Control) Order, 1968, made under the Imports and Exports (Control) Act, 1947, reads as follows :-

"10A - Declaration as to value, sort, quality, etc. of exported goods. On the exportation from any Customs port of any goods, whether liable to duty or not, the owners or exporter of such goods shall, in the shipping bill or other relevant document state the value, sort, specification, quality and description of such goods to the best of his knowledge and belief, and certify that the quality and specification of the goods as stated in those documents, are in accordance with the terms of the export contract entered into with the buyer or consignee in pursuance of which the goods are being to the truth of such statements at the foot of such shipping bill or other documents."

Section 3(2) of the Imports and Exports (Control) Act says that any violation of the requirement of a tribunal statement under Clause 10A of the Exports

(Control) Order it deemed to be a violation of the prohibitions u/s 11 of the Customs Act, thereby bringing the operation all the provisions of the Customs Act, including those contained u/s 113(i). I have referred to Section 50 and Section 113(1) of the Customs Act and Clause 10A of the Exports (Control) Order, and Section 3(2) of the Imports and Exports (Control) Act, only to show with what powers the Customs Authorities are clothed in case an exporter knowingly makes wrong statements as to the quality of goods. In the present case no such power has been invoked, and no show cause has been put forth by the department the department. I have already referred to the relevant provisions under which the goods are certified by the competent agency. The provisions of the notifications published u/s 6 of the Quality Control Act are alleged to have been contravened. The notification prohibits the export of goods which are not accompanied by a certificate issued under the Quality Control Act. I shall read the relevant portion of the notification.

"(4) Prohibits the export in the course of international trade of fish and fish products unless the same are accompanied by a certificate issued by any of the Export Inspection Agencies established at Calcutta, Bombay, Delhi, Madras and Cochin u/s 7 of the Export (Quality Control and Inspection) Act, 1963 (22 of 1963) to the effect that fish and fish products conform to the specifications as set out in the said Annexure."

As I stated earlier, the goods were admittedly covered by valid certificates when they were brought to the Wharf. Until the goods were subjected to further examination and declared not export-worthy, these goods had not violated the prohibition contained In the Notification. Section 133(d) of the Customs Act has been invoked to confiscate these goods, It says:

* * *

"113. Confiscation of goods attempted to the importers, exporters, etc.

- The following export goods shall be liable to confiscation :-

(d) any goods attempted to be exported or brought within the limits of any customs area for the purpose of being exported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;

* * *

Admittedly no attempt had been made to export these goods after they were declared unexportworthy. Until the goods were brought to the Wharf and subjected to as examination, no attempt had been made to export them contrary to any prohibition imposed by or under the Customs Act or any other law for the time being in force. The certificates which operated, until they were cancelled after the subsequent examination on the Wharf, were sufficient evidence as to the quality of the goods and as to the satisfaction of the conditions mentioned for export under the Notification issued u/s 6 of the Quality Control Act. Consequently it cannot be stated that the goods in question had, by any stretch of Imagination, been attempted to be exported in violation of Section 113(d) of the Customs Act. The department has no case that after the declaration of unimport worthiness any attempt export has been made by the exporters. In fact the goods had been cleared from the Wharf immediately after the examination on execution of a bond. The goods were not brought back to the Wharf at any time thereafter. It was therefore inconceivable that, after the declaration of the unexport worthiness of the goods, any attempt had been made to export them. There is no such allegation. Looking at the section, it is impossible to hold other wise read in isolation can only apply to cause where the department has a case that subsequent to the declaration of unexport worthiness the exporters made an attempt to export. Section 118(b) of the Customs Act can also have no applications to the facts of this case for the reasons mentioned with reference to Section 113(d). Since the goods are not liable to confiscation on the basis of Section 113(d), the package or any other goods contained in such package, cannot comes within the scope of that provision.

8. Respondent''s counsel Shri Chacko submits that it is not sufficient that the goods are covered by a certificate but that they should in fact the export worthy. That argument might have had come relevance I would say such relevance - If the department has set up a case to attract Section 113(1) read with Section 50 of the Customs Act. There is no such allegation and these provisions are not invoked. In the circumstances counsel''s submission has no relevance to the facts of this case.

9. The impugned orders Exts. P1, P3, P6 and P8 are not aside. The O.P. is accordingly allowed. The parties will bear their respective costs.