

(1987) 03 BOM CK 0019
In the Bombay High Court
Case No : Writ Petition No. 2956 of 1986

Sunshine Exporters

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 09-03-1987

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1987) 13 ECC 235 : (1988) 36 ELT 546

Hon'ble Judges : S.M. Daud, J

Bench : Single Bench

Judgement

1. The short point for determination to which I propose to restrict myself in this judgment dealing with a petition under article 226 of the Constitution, is the maintainability thereof having regard to the facts and circumstances in which it is shrouded.

2. Petitioner is a firm registered under the Partnership Act and deals in the export and import of various kinds of goods. Respondent No. 1 is the Union of India and respondents 2 to 4, the officers of the customs departments. Petitioner is a transferee of REP licences issued under Appendix 17 of the Policy AM, 85-88. Purporting to exercise the right given to it under the transfer, petitioner imported goods described as a "mixture of odoriferous substances". The goods came in two consignments under bills of entry dated 5.6.1986 and 7.6.1986. An initial test of the goods was carried out by the Deputy Chief Chemist and he issued a report certifying that the sample taken was a mixture of odoriferous substances (OS), liquid in form and being free from alcohol. The goods were however held up on the suspicion of their being "perfumery compound" (PC). It may be here mentioned that the rate of duty on OS and PC is the same, though in terms of money there would be a substantial difference because of the valuation between the two, being much different. To fortify the belief that the imported goods were PC, the respondents took various steps, including a re-examination of another sample of the consignment, seizure of various documents and articles from the

office/residence of the partners of the petitioner, and, also collecting material from other agencies including interrogation of a partner of the petitioner. On 6th November, 1986, the present petition seeking various directions was filed. The first direction is that the goods covered by bills of entry dated 5.6.1986 and 7.6.1986 be allowed to be cleared by charging the normal rate of duty after accepting the price shown in the invoice; secondly, to forthwith release the goods seized from the residence of the partners of the petitioner without levying any fine or penalty thereon; thirdly, to forthwith hand over to the petitioner all the document, bills, papers and files etc., and the samples seized from its office premises, and fourthly, to issue a detention certificate for the entire period the imported goods were not allowed to be cleared. So far as the goods seized from the residence of a partners of the petitioner are concerned, it has to be mentioned that these were released in February 1987, on the finding that after a test they were found to be mixture of OS in liquid form.

3. Respondents have come forthwith two affidavits : First, at the stage of opposing the admission, and the second, filed as recently as 13.2.1987. Amongst other defences, it is urged that the petition is premature and intended to pre-empt the jurisdiction of the authorities under the Customs Act. It is argued that but for the uncooperative attitude of the petitioner, an order in adjudication would have been passed much earlier. Petitioner is responsible for the delay that has occurred, and the pendency of the petition has acted as a deterrent to the authorities going ahead with the adjudication. To meet this submission, counsel for the petitioners advanced the fallowing contentions : Firstly, the petition was instituted after quite sometime of the refusal to clear the bills of entry tendered on 5th and 7th of June, 1986. Respondents took their own time in filing an affidavit in reply. For that reason, the issue of rule was delayed till as late as 15.12.1986. After granting the rule, a direction was given that the petition be heard peremptorily in January 1987. Again, this could not be done because of the failure of the respondents of file a return. At any rate, the stage of admitting the petition, the advisability or otherwise of taking up the hearing had been appraised and now that the petition has been admitted, it would not be proper to send back the petition to be heard by the authorities constituted under the Customs Act. The attitude of the respondents was clear from the bias indicated by the two returns submitted on their behalf. In the fact of this evidence, petitioner could not expect to get justice from the respondents. As it is, the matter was delayed and it would not be proper to relegate petitioner to the very stage at which it was, in the first week of June 1986 when the bills of entry were tendered. Lastly, the record was adequate to resolve what was basically a simple classification dispute. Mere bickering on the part of the respondents could not convert it into a dispute raising many and complicated questions of fact, and normally determinable, in a proceeding under article 226 of the Constitution.

4. Having heard counsel, I propose to sustain the preliminary objection raised on behalf of the respondents but also to partly allow the petition. My reasons for so holding are given below :-

5. Dr. Kantawala contends that an examination and the testing of the goods was carried out immediately after the import of the goods. A sample was taken, and after analysis, a report was submitted by the Deputy Chief Chemist. That report was in relation to a sample from the consignments figuring in this case and was clear. There was no reason for the respondents to dither after the receipt of this report. They had taken recourse to third degree methods to force a partner of the petitioner to compel him to give an incriminatory statement. This was borne out by the retraction affidavit sworn by that partner on October 28, 1986 (see Ex. D). To bolster their theory, the respondent had roped in the services of petitioner's rivals in the trade. The communications received from these rivals were of no substance. To further fortify themselves the respondents had carried out a reckless search and seizure of the residence and office of the partners of the petitioner. They had then concocted documents in the shape of a fresh reports from the very Deputy Chief Chemist. These reports as Exs. A and B to the second return of the respondents purporting to have been drawn up on 18.11.1986, were not worth the paper on which they were written. First, it was highly questionable as to whether they did in fact come into existences on 24.11.1986, seeing that there was no reference to them in the first return tendered by the respondents on 24.11.1986. Had these reports existed on 18.11.1986 as is urged by the respondents, there would have been a reference to them in the first return submitted nearly six days later on 24.11.1986. Next, no data was given in the reports of 18.11.1986. All that was mentioned therein was, that the liquid tested was, of a certain colour and on the basis of this, it was described as a PC. I do not propose to go into the value to be attached to the two reports. It is possible that the reports which bear the date 18.11.1986 are fabrications inadequate, or, the result of a command issued to the Deputy Chief Chemist. This raises a question of fact and the point to be considered would be whether the writ Court should enter into the arena of facts having regard to the facts and circumstances of this case ? Respondents were not content with the first report of the Deputy Chief Chemist in which the imported goods were described as a mixture of OS. That reported be correct or it may be that it was erroneous thus compelling recourse to a second. The material collected by the respondents from the trade rivals of the petitioner may also be not worth much. However this is appraisal of facts - an arena - which a writ Court would be reluctant to enter. As the record stands, there is the word against word of the rivals and, in the absence of a detailed investigation it is not possible to say which version be accepted. Perhaps even the documentary evidence that has come on record may be inadequate for a determination of the question as to whether the imported article is a mixture of OS or PC. Now merely because the petition was admitted and directed to be expeditiously, heard cannot be a reason for the Court going beyond the normal confines of the jurisdiction under article 226. Dr. Kantawala submits that the respondents have acted mala fide in delaying a determination and in having attempted third degree methods upon him. The accusation of third degree is levelled against one Mr. S. Sharma, and appraiser. Perhaps, Mr. Pandey who has submitted the returns on behalf of the

respondents in this case has predetermined the guilt of the petitioner. But the customs department consists of many, besides these two Officers. It would not be proper to think that all of them entertain the same bias as these two Officers. The dispute may be one of classifications, but cannot be resolved without going into the facts and this probe is not possible having regard to the paucity of the material on record. Even if parties were willing to remove the inadequacy, this Court acting under article 226 of the Constitution, will not be the appropriate forum for carrying out the probe. The delay of which Dr. Kantawala complains is explained by the respondents by saying that after the institution of this petition, they stayed their hands in deference to the jurisdiction of this Court. This may not be what was expected of them, but is certainly something which happens fairly often. As soon as Government Officers learn of a party having approached a Court of law, they seem to become frozen in their tracks. The proper order to be passed in the above circumstances will be to direct an expedition in the issue of a show cause notice and a decision thereupon by respondent No. 4, who shall be a person other than M/s. Sharma and Pandey referred to earlier. The show cause notice, if any, be issued within a week from today and petitioner be heard in the next week and a decision thereupon be given within two weeks of the completion of the hearing of the petitioner by respondent No. 4. This will not prevent the petitioner from coming to this Court after it has exhausted its statutory remedies under the Customs Act or even earlier if there is any under delay on the part of the statutory authorities. Hence the order.

ORDER

Rule discharged except to the limited extent indicated above, with parties being left to bear their own costs.