(1978) 08 CAL CK 0003

In the Calcutta High Court

The Additional Collector of Customs and Another — APPELLANT

Vs

India Steamship Company Ltd. — RESPONDENT

Date of Decision : 17-08-1978

Acts Referred:

Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 11, 111, 112, 113, 114

Citation : (1978) CriLJ 1673 : 83 CWN 204

Hon'ble Judges : Sankar Prasad Mitra, C.J;Salil Kumar Datta, J

Bench : Division Bench

Judgement

Sankar Prasad Mitra, C.J.—This is an appeal from a judgment of Dipak Kumar Sen, J. delivered on an application under Article 226 of the Constitution on January 11, 1977. The petitioner which is the respondent before us had asked for a Writ in the nature of certiorari for production of records of certain proceedings before the Additional Collector of Customs and of his order dated the 23rd August, 1975, so that the said Order might be set aside, cancelled or quashed. A Rule was issued by this Court and the Learned Trial Judge has made the Rule absolute to some extent. The facts briefly are that a vessel called "S. S. Indian Resolve" arrived at the Port of Calcutta from the United Kingdom on the 8th October, 1974. On its way to Calcutta it touched Continental ports, Bombay, Colombo, Madras and Visakhapatnam. She was carrying a quantity of cargo imported for delivery at different Indian ports including the Port of Calcutta.

2. As usual the vessel was carrying bonded stores in charge of Peter Sherazee, who at the material time was the Purser of the vessel. Peter Sherazee had also sailed as Purser of the vessel In her two previous voyages.

3. According to the Bonded Stores List which the Purser had handed over to the Customs officer when the vessel arrived at Calcutta, there was a quantity of 1,22,400 pieces of cigarettes In store packed, inter alia, in unopened large cartons of 5,000 cigarettes each, bound by iron strips. There were also smaller cartons and open cartons.

4. On checking by the Customs the unopened large cartons appeared to be intact.

5. Under the Customs Rules and Regulations, cigarettes, tobacco and alcoholic liquor kept in the ships'' stores in foreign going vessel are sealed in the vessel''s bond-room while in port and cannot be taken out of bond without the permission of the appropriate Customs Officer and are so taken out only in the letter''s presence,

6. Accordingly, after checking, the Customs Officer locked up and sealed the bond-room of the vessel.

7. On two occasions thereafter, namely, on the 12th and the 16th October, 1974, Peter Sherazee took out some cigarettes from the bond-room in the presence of the Customs Officer. On both these occasions the Customs'' Seal on the bond-room was found intact.

8. On the 28th October, 1974, one S. K. Mukherji took over charge as Purser of the vessel from Peter Sherazee, On that day the Customs Officer accompanied S. K. Mukherji and Peter Sherazee for verification of the stock In the bond-room and also for taking out some cigarettes and alcoholic liquor for consumption in the vessel. The large cigarette cartons still appeared to be intact. Thereafter the bond-room was duly locked and sealed.

9. On the 4th November, 1974 S. K. Mukherji went with the Customs Officer to the bond-room for taking out a further quantity of cigarettes. This time the seal of the bond-room was found intact; but one of the large cartons, when opened, in presence of the Customs Officer, was found to be empty. Thereupon all the large unopened cartons were checked. It was found that nine of them were empty. On the basis of the stock statement as submitted there was a shortage of 45,000 cigarettes.

10. S. K. Mukherji forwarded a report on this incident to the Marine Superintendent of the respondent which was the owner of the vessel. A copy of this report was also sent to the Customs Department.

11. On the 9th November, 1974, the Customs Officer, boarded the vessel. He seized the empty cartons and recorded statements of the master of the vessel, of S. K. Mukherji and of Peter Sherazee.

12. Apart from the statement made on the 9th November, 1974, Peter Sherazee made three other statements before the Customs Officer on the 11th and the 28th November, 1974 and the 2nd December, 11974, These statements were recorded,

13. In the statements made on the 9th and 11th November, 1974 Peter Sherazee asserted that the Stores'' list which he Initially submitted to the Customs Department was correct. He said that the vessel did have 1,22,400 cigarettes on board, And he was in no way responsible for the shortage detected later.

14. In Ms subsequent statements made on the 28th November, 1974 and the

2nd December, 1974 Peter Sherazee retracted his earlier statements, He admitted that his earlier statements were false. He stated that the quantity of cigarettes which he Initially declared in the Stores" list was Incorrect, The truth was that the total quantity of cigarettes actually Imported was 77,400 and not 1,22,400. He had deliberately Inflated the number of the cigarettes In the books for certain reasons,

15. The vessel left the Port of Calcutta on a foreign voyage on or about the 11th November, 1974, after the respondent had deposited a sum of Rs. 50,000 : 00 with the Customs Authorities as security for any fine or penalty which might be imposed in respect of the alleged shortage.

16. On the 9th April, 1975, the Assistant Collector of Customs for Prevent live (Adjudication), Calcutta, issued a notice to the petitioner alleging, inter alia, that 45,000 cigarettes were found short in the bond-room of the said vessel on the 4th November, 1974, and that no satisfactory explanation was forthcoming from the respondent of the alleged shortage. The notice said that it was reasonably believed that the said cigarettes had been removed clandestinely from the vessel while she was in Port. It was contended that the vessel was liable to be confiscated u/s 115(1)(e) of the Customs Act, 1962 which ran thus;

Section 115, Confiscation of conveyances, (1) The following conveyances shall be liable to confiscation -

(e) Any conveyance carrying Imported goods which has entered India and is afterwards found with the whole or substantial portion of such goods missing, unless the master of the vessel ...is able to account for the loss of, and deficiency in, the goods.

17. By the said notice of the 9th April, 1975, the respondent was called upon to show cause why the vessel should not be confiscated and why penal action should not be taken u/s 112 of the Customs Act, 1962, which provides for penalty for improper importation of goods, etc. The basis of this notice was the statements which the officers of the ship had made including the statements of Peter Sherazee.

18. At this stage it would be appropriate to refer to Section 125 of the Customs Act which gives the option to pay fine in lieu of confiscation. Section 125(1) and (2) are as follows:

(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or 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.

19. The respondent replied to the notice of the 9th April, 1975 and thereafter a personal hearing was granted. The proceedings were finally disposed of by an order dated the 23rd August, 1975 of the Additional Collector of Customs who found, inter alia, as follows:

(a) The vessel did have 1,22,400 cigarettes on board when she arrived at Calcutta;

(b) 45,000 cigarettes were subsequently found missing from the bond-room of the vessel; and

(c) Peter Sherazee had unlawfully removed 45,000 cigarettes on some date between the 11th October, 1974 and the 28th October, 1974.

20. The respondent did not dispute the shortage but contended that the shortage was inconsequential compared to the value of the entire imported cargo carried by the vessel and therefore Section 115(1)(e) was not attracted,

21. It is on record that the imported goods scheduled to be unloaded at Calcutta consisted, inter alia, of 847 tonnes iron and steel, 200 tonnes of carbon blocks and plates, 6 tonnes of milk powder, 976 tonnes of machinery, spare parts, equipments and other general cargo. The respondent''s contention was that compared to the cargo to be unloaded the missing goods, namely, 45,000 cigarettes were inconsequential and insignificant.

22. The Additional Collector of Customs has repelled this contention. He has held as follows:

It has not been defined as to what ''substantial portion'' would refer to. In the case of a vessel the value of her whole cargo and other imported goods carried thereon could be enormous. If a Master of the Vessel clandestinely disposes of say goods over Rs. 10 lakhs even when it can be argued by calculating the percentage that the loss deficiency is ''inconsequential'' in terms of percentage with reference to the total value of the missing goods, however, nobody can say that such deficiency is inconsequential. In my opinion the word ''substantial portion'' does not necessarily refer to the ratio between the value of the missing goods and total value of the cargo. On the other hand in order to be meaningful in terms of the spirit and the various provisions of the Customs Act, the term ''substantial'' should refer to the value of the missing goods in themselves. I entirely agree with the owners of the vessel, the Master and steamer agent that a deficiency of two or three cigarettes cannot be considered as substantial. But a deficiency of 45,000 cigarettes Is, in my opinion, certainly substantial. This lot is certainly a substantial portion of the Imported goods carried by the vessel. The amount of duty leviable on the missing quantity is more than Rs. 31,000.00. Taking all these relevant factors into consideration I consider that the loss or deficiency amounting to 45,000 pieces has rendered the vessel liable to confiscation u/s 115(1)(e) of the Customs Act.

23. The Additional Collector Imposed a fine of Rs. 50,000.00 in lieu of confiscation. He also imposed a penalty of Rs. 10,000.00 on Peter Sherazee u/s 112 of the Customs Act, 1962,

24. Dipak Kumar Sen, J. has held that the Additional Collector''s order dated the 23rd August, 1975, so far as it directs the confiscation of the vessel is vitiated by an erroneous interpretation of Section 115(1)(e) of the Customs Act, 19''62 and His Lordship has set it aside, To this extent the Rule has been made absolute. The appellants, however, were given liberty to proceed with the enquiry in the light of the observations made in His Lordship''s judgment and determine whether the missing imported good formed a substantial portion of the total quantum of imported goods in bulk and/ or in value and decide accordingly, The Learned Trial Judge has sustained the order of penalty of Rs, 10,000.00 imposed on Peter Sherazee.

25. It is apparent that the appeal Involves construction of the provisions of Section 115(1)(e) of the Customs Act, 1962. Mr. Ajit Roy Mukherjee, learned Counsel for the respondent, has argued before us that the words "substantial portion" mean substantial portion of all the "imported goods". In every case, says Mr. Roy Mukherjee, one has to consider the totality of the imported goods and then find whether a substantial portion thereof is missing. When the ''whole'' of the imported goods is missing, one takes all the goods imported as a collective unit. If the whole of the collective unit is missing, Section 115(1)(e) would be attracted. If a "substantial portion" of the collective unit is missing then also Section 115(1)(e) would be attracted? but if one of the items of the collective unit is missing or a substantial portion of that item is missing, the vessel itself cannot be confiscated. Any other construction, Mr. Roy Mukherjee contends, of Section 115(1)(e) would give a harsh treatment to the literal meaning of the words used in the Statute. He has relied on Craies on "Statute Law" and Maxwell on the "Interpretation of Statutes" in support of his contention that when the plain meaning is clear the spirit of the Act is irrelevant and the literal meaning Is to be adhered to disregarding the consequences that ensue,

26. We asked Mm what precisely ha meant by ''collective unit'', Is ''collective unit'' to be adjudged with reference to value or with reference to the quantity of imported goods? We said to him that supposing by a vessel 100 tons of wheat and 4 gold bars had been imported. And of these 4 gold bars, 3 were missing. In such a case, would the Customs Officer, In construing Section 115(1)(e) say that the three gold bars compared to the total quantity of goods imported are inconsequential and therefore, the vessel cannot be confiscated ? Or would the Customs Officer say that if we compare the value of the 3 gold bars to the total value of the goods Imported, the missing goods constitute a substantial portion of the imported goods ? Mr. Roy Mukherjea failed to give a convincing answer to these queries of ours. He said that ''perhaps'' the Customs Officer would go by

the value of the goods.

27. Mr, Roy Mukherjee also Invited us to take Into consideration the corresponding Section of the earlier Act, namely, the Sea Customs Act, 1867. Section 167(4) of the earlier Act ran thus:

Section 167 (4). The offences mentioned in the first column of the following schedule shall be punishable to the extent mentioned in the third column of the same with reference to such offences respectively:

Offences : Section of the Penalties Act to which offence has reference ... ... 4. If any vessel which 11 Such vessel has been within shall be the limits of any liable to port in India with confiscation. cargo on board, be Afterwards found in any port, bay, river, creek or arm of the sea in India right and ballast and if the master be unable to give a due account of the Customs, Port where such vessel lawfully discharged her cargo.

28. Mr. Roy Mukherjee''s point is that under the old Act if any part of the cargo was missing, the vessel was liable to confiscation. The legislature has deliberately changed the language in Section 115(1)(e) of the new Act and has provided that in order that the vessel may be liable to confiscation the whole or substantial portion of the cargo must be found missing. This shows, according to Mr. Roy Mukherjee, that the legislature had in view the totality of the cargo and not any specific item or items of the cargo,

29. We find it difficult to accede to the contentions of learned Counsel for the respondent To us it seems that in interpreting Section 115(1)(e) the literal meaning of "substantial portion" of imported goods cannot be adhered to for reasons already indicated. It is true that a Judge cannot mould a Statute to his won conception of justice or expediency. He has to adhere to the ordinary meaning of the words used, and to the grammatical construction, unless the ordinary meaning is at variance with the intention of the legislature, to be collected from the Statute itself, In which case the language may be varied or modified to give effect to the legislature''s intention. Anyone who contends that a section of an Act of Parliament is not to be read literally must be able to show one of two things -- either that there is some other section which cuts down its meaning, or else that the section itself if read literally is repugnant to the general purview of the Act; vide Craies on Statute Law, 3rd Edn. page 84,

30. In Maxwell on the "Interpretation of Statutes" 8th Edition, at page 20 it is stated : "The true meaning of any pas sage it is said, is to be found not merely in the words of that passage, but in comparing it with other parts of the law, ascertaining also what were the circumstances with reference to which the words were used, and what was the object appearing from those circum stances which the legislature had in view, Every clause of a Statute should be construed with reference to the con text and the other clauses of the Act, so as, so far as possible, to make a consistent enactment of the whole Statute or series of Statutes relating to the subject matter".

31. The principles of construction referred to above appear to be relevant in the instant case If we accept Mr. Roy Mukherjee''s contention that the words "substantial portion" of imported goods In Section 115(1)(e) literally mean sub stantial portion of all the Imported goods, we shall be faced with the difficulty as to whether these two words are to be understood with reference to the value of the imported goods or the quantity of Imported goods. In these circumstances, we have no other alternative but to look into the other provisions of the Act to appreciate in its proper perspective the meaning of "substantial portion" in Section 115(1)(e). Section 115 is in Chapter XIV of the Act which deals with "confiscation of goods and conveyances and imposition of penalties". Sections 111 and 112 are the first two sections in Chapter XIV which relate to confiscation of improperly imported goods and penalty for improper importation of goods. Sections 113 and 114 relate to confiscation of goods attempted to be improperly exported and penalty for attempt to export goods improperly. Then comes Section 115 which provides for confiscation of conveyances carrying goods. The next section, that is, Section 116 is a section on penalty for not accounting for goods. Section 115 is linked with Section 125 which gives an option to pay fine in lieu of confiscation. Reading all these sections together one''s impression is that they are concerned with goods imported or exported and not with the totality of the cargo.

32. There is one other aspect of the matter which cannot escape our attention. The Customs Act, 1962 is an Act to consolidate and amend the law relating to Customs, Section 11(1) of the Act gives power to the Central Government to prohibit importation or exportation of goods. It says: "If the Central Government is satisfied that it is necessary so to do for any of the purposes specified in Sub-section (2) it may, by notification in the Official Gazette, prohibit either absolutely or subject to such conditions (to be fulfilled before or after clearance) as may be specified in the notification, the import or export of goods of any specified description."

33. Then, Sub-section (2) of Section 11 says in Clause (c) thereof that one of the purposes referred to in Sub-section (1) is "the prevention of smuggling".

34. The object of the different sections of Chapter XIV to which reference has already been made by us is, therefore, to be discovered in Section 11(2)(c). For prevention of smuggling the legislature has even provided for confiscation of the conveyance itself. In these premises if we say that the words "substantial portion" of imported goods in Section 115(1)(e) have to be read in the context of the totality of goods imported, the very object of the Act -- embedded in Section 11(2)(e) may be frustrated. Let us repeat the example we gave to Mr. Roy Mukherjee. A vessel may have imported 100 tons of wheat and 4 gold bars out of which 3 bars have been smuggled out. The owner of the vessel, if we go by quantity of imported goods, cannot be punished by confiscation of the vessel itself even though smuggling of 3 gold bars has taken place. We do not think that this was or could have been the intention of the legislature. In our opinion, if a

vessel has imported different items or varieties of goods and if either the whole or substantial portion of one of the items or varieties be found missing, the Customs Authorities would be entitled to invoke Section 115(1)(e). If we do not adopt Ms interpretation, we shall not be giving effect to the object the legislature had in view, namely, the prevention of smuggling,

35. It was argued before us that confiscation of a vessel Is an extremely harsh and drastic penalty or punishment and that was why, the totality of imported goods became important Our answer to that argument, Is that this is precisely why the legislature in Section 125 has made elaborate provisions for option to pay fine in lieu of confiscation. When the adjudging officer finds that a case before him Is within the purview of this section, the owner of the vessel may be asked to pay a fine to escape confiscation.

36. In view of the conclusions we have reached we are unable to hold on the facts and in the circumstances of this case that the order of the Additional Collector of Customs dated the 23rd August, 1975 was unjustified. It was urged before us that the respondent had alternative remedies under the Customs Act, 1962 and its application under Article 226 of the Constitution was not maintainable on that ground. But since we are not inclined to disturb the said order of the 23rd August, 1975, we do not propose to deal with the arguments advanced before us on "alternative remedies".

37. In the result, this appeal is allowed. The Judgment and Order of the learned Trial Judge are set aside. The Rule is discharged. Interim orders, if any, are vacated. There will be no order as to costs.

Salil Kumar Datta, J.

38. I agree.