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**(1963) 05 MAD CK 0009**  
**In the Madras High Court**  
**Case No : Writ Appeal No. 300 of 1962**

The Collector of Customs

APPELLANT

Vs

H.S. Mehra

RESPONDENT

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**Date of Decision :** 03-05-1963

**Acts Referred:**

Customs Act, 1962 — Section 20, 29A, 29B

**Citation :** AIR 1964 Mad 504 : (1964) ILR (Mad) 170

**Hon'ble Judges :** S. Ramachandra Iyer, C.J.; Venkataraman, J

**Bench :** Division Bench

**Advocate :** for Additional Government Pleader, for the Appellant; K.C. Jacob, S.K.L. Ratan and J. Satyanarayana, for the Respondent

**Final Decision :** Allowed

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## Judgement

S. Ramachandra Iyer, C.J.—This appeal which is filed under Clause 15 of the Letters Patent against the judgment of Veeraswami, J., raises

an important question under the Sea Customs Act, 1878. The respondent obtained" from the Joint Controller of Imports at Madras on 4-2-1960

a licence under the Import and Export Control Act, 1947, for the import from foreign countries ten thousand yards of velvet Fents -as per the

Import Policy Book, that is, cotton" velvets, the value thereof being limited to Rupees 31 2"75/- (c i. f. price). He imported in February 1960 a

Quantity of 899 yards. In December of the same year a second consignment arrived by S. S. State of Madras. The respondent filed a bill of entry

declaring that the quantity imported and to be cleared was 9,111 yards and that the value of it was Rs. 28,501/-, both conforming to the limits

imposed by the licence. The Customs Authorities found that the goods imported were artificial silk, velvet, different from cotton velvet, the import

of which alone was permitted under the terms of the licence; also that they were not cut to shape in accordance with the terms of the licence. There

was also an error in regard to the value declared: the actual value" of the goods was found to be Rs. 43,697-37 nP., which was in excess of the limit imposed by the licence.

Thus, there had been three matters on which the respondent was found to have contravened the law: (i) importing a class of goods different in

quality and shape from that permitted (ii) a. mis -declaration of the value of goods worth Rs 43 697-37 nP-28,501/- and (iii) consequent under-

valuation which resulted in the loss to the Government of duty relative to that amount, that is Rs. 15,232-58 nP. .

2. The Collector of Customs was prepared to take a lenient view of the first of the breaches, mentioned above, as similar goods were allowed to

be imported on the previous occasion, and for the further reason that under the conditions of the licence the respondent had only to re-export the

goods. But in regard to the other two transgressions, he passed an order bearing date 24-3-1961 and directed:

In respect of the excess over the amount of the Release Advice (licence) and misdeclaration of value respectively, I order that the goods valued at

Rs. 15,232-58 (i.e. the value and quantity not covered by the licence) be confiscated u/s 167(8) Sea Customs Act read with section 3(2) of the

Imports and Exports (Control) Act, 1947 (as amended) and that the whole consignment be confiscated u/s 167 (37), Sea Customs Act.

I give the importers an option u/s 183 of the Sea Customs Act to clear the goods for home consumption on payment of a fine of Rs. 16,800/

(Rupees sixteen thousand eight hundred only) in lieu of confiscation u/s 167(8) Sea Customs Act and on payment of a fine of Rs. 7,600/ (Rupees

seven thousand six hundred only) in lieu of confiscation u/s 167(37), Sea Customs Act.....

3. The respondent accepted that order and demanded permission to clear the goods on payment of the fine imposed. But the Customs Authorities

declined to accede to the request unless the duty payable on the goods was also paid. This led to the respondent's two applications under Article

226 of the Constitution to this Court (1) for the issue of a writ of certiorari to quash the order of confiscation as it was passed on an erroneous

estimate of the value of goods imported and (2) for the issue of a writ of mandamus directing the Collector of Customs to release the goods on payment of the fine but without payment of duty.

4. Veoraswami, J., rejected the former application on the ground that the value of goods as ascertained by the Customs Authorities had not been

shown to be wrong. But the learned Judge holding that there could be no imposition of duty on goods which had been confiscated and released on

payment of penalty in lieu of confiscation, directed the authorities, to release the goods on payment of the fine and without payment of the duty

thereon. The Government have appealed against that judgment.

5. The licence which authorises the importation by the respondent of the goods in question was issued, as stated earlier, under the provisions of the

Import Control Act, 1947. u/s 3(2) of that enactment all goods in respect of which there is a prohibition or restriction under the Act will be

deemed to have been prohibited u/s 19 of the Sea Customs Act, and the provisions of the latter Act would subject to modification in section 183

therein, be attracted. Excessive import will, to the extent of the excess, be regarded as prohibited import. u/s 167(8) if prohibited goods are

imported, such goods shall be liable to confiscation and any person concerned in any such offence shall be liable to a penalty not exceeding three

times the value of the goods or not exceeding one thousand rupees. This offence must be deemed to have been committed in the present case, as

there was a contravention of the terms of the licence issued under the Import and. Export Control Act. The authorities imposed a. fine of Rs.

16,800/- in lieu of confiscation. As we indicated earlier, there was another offence, namely, misdeclaration in the bill of entry. That is an offence

under the Sea Customs Act which has been made punishable u/s 167 (37) (b). The penalty prescribed for such misdeclaration would be

confiscation of the goods and every one concerned in any such offence shall be liable to a, penalty not exceeding Rs. 1,000/-. The Customs

Authorities levied a fine of Rs. 7 600/- in lieu of. confiscation in respect of this offence.

6. The short question that falls to be decided in this appeal is, whether in respect of goods confiscated and released u/s 183, there could be an

imposition of the tariff duty. The answer to that question is not difficult under the

present law. The Customs Act, 1962, (Act 52 of 1962) which came into force on 2-2-1963, provides u/s .125 (2) that any fine imposed" in lieu of confiscation will be in addition to duty. But there is, under that Act a limit to the extent of the fine to be imposed. As the import in the present case was prior to the new enactment, we have to consider whether the liability to duty was the same even under the previous Act.

7. Section 20 of the Sea Customs Act, 1878,.. directs the levy of customs duties at such rates as may be prescribed by or under any law, on goods imported by sea from any foreign, country. The Tariff Act, 1934, consolidates the law relating, to customs duties on goods imported and exported by sea as well as by land. The Sea Customs Act us well as the Land Customs Act, in addition to empowering" the Government to prohibit importation of specified goods, are substantially fiscal enactment having in them very stringent provision for levy and collection of duties and for punishment, administrative and judicial, for evasion of the provisions contained therein. Section 87 of the Sea Customs Act empowers the assessment of dutiable goods and permits the owner to clear the same only thereafter. Sections 29- to 41 are a fascicule of sections providing for the procedure to be adopted for the valuation of goods the levy, abatement and refund of duty.

The Tariff Act specifies the rate of duty. Section 29 requires the importer to declare the real value of the goods, quantity and description of such goods to the best of his knowledge and belief in a. bill of entry as soon as the goods are imported. Sections 29A and 29B enable provisional assessment of duty on the imported goods on the basis of the value mentioned in the bill of entry. If the final assessment, which is to be made on ascertaining the real nature and value of the goods, exceeds the provisional one the owner will have to pay the excess. Per contra, if the final assessment falls short of the provisional one he will get a refund of the excess duty paid. A false statement in the importer's bill of entry is punishable as an offence u/s 167 (37) of the Act and the importer will be liable to administrative penalties-referred to above. The authority to levy and collect the duties is the Customs Collector.

8. In tile present case there has been a contravention of the licence issued under the Import Control Act. The importation beyond the limits which

the licence prescribed will, by reason of the provisions referred to earlier, have to be regarded as prohibited under the Sea Customs Act and the

contravention will come within the ambit of section 167(8) under which the goods illegally imported could be confiscated and monetary penalty

imposed on the person concerned in the import. Section 183 says:

Whenever confiscation is authorised by this Act, the officer adjudging it shall give the owner of the goods an option to pay in lieu of confiscation

such fine as the officer thinks fit.

This section has been modified in its application to a contravention of the Import and Export Control Act. Under which the. officer adjudging

confiscation has a. discretion to allow a redemption of goods by the importer on payment of the fine, but will not be bound to do so as is a case

under the Sea Customs Act.

9. The Authority to adjudge the confiscation will be the Customs Collector or other officers specified in the hierarchy. But in cases where the value

of the goods and the penalty and duty did not exceed a particular amount, authority to confiscate is given to the Assistant. Collector or other

subordinate officers of the Department to adjudge confiscation or, in the alternative, to impose a fine u/s 183.

10. Thus, it will be seen that the authority competent to levy import duty may not be the same as the one adjudging confiscation. Where

confiscation takes place, the property will vest in the Government: see section 184. But where the fine is imposed u/s 183 in lieu of confiscation,

and such fine is paid, the prohibition against import disappears and the goods are redeemed, as it were, free from such prohibition. In a case where

the Authority acting u/s 183 passes an order adjudging confiscation but giving option to the importer to pay fine in lieu of confiscation, such

confiscation could only be regarded as a defeasible one on the fine being paid. The power to impose confiscation is contained in Section 182 read

with section 167 (8) and (37) of the Sea Customs Act, while section 183 confers 1 authority on the officer adjudging confiscation as a part of that

order to impose a fine in the place of confiscation. Payment of fine thus defeats or avoids confiscation; such a case cannot be viewed as a transfer

of the goods to the importer by the Government after the}" had vested in them. In other words, where an order is passed giving an option u/s 183

to the importer, there could only be a defeasible confiscation, which will become effective if the fine is not paid. It will be nullified if it is paid.

11. The learned Judge has taken the view that once the goods are confiscated u/s 182 and thereby vested in the Government, there would be no

liability to duty in relation to the goods, as otherwise it would mean that the duty will be payable on goods belonging to the Government. He

observes:

Even so, after confiscation no liability in relation to the goods arises to a charge of import duty. The question is whether the position can be

different when actually there is no order of confiscation but in lieu of confiscation, an option to pay and clear the goods is given. I have come "to

the conclusion that even in such a case the goods cannot be subjected to import duty. What weighs with me in coming to this conclusion is that

even though, where the option is applied there is no confiscation of the goods, the option arises only in the event of the decision to confiscate. If

there is no such decision, there is no room for applying in the option. Looking at the matter on principle, the decision to confiscate but to give in lieu

of it an option to pay and clear the goods must carry the same consequences in relation to levy of import duty as actual confiscation and vesting of

the goods in the Government.

12. We would, with respect, point out that the imposition u/s 183 of a redemption fine", as it is sometimes called is in lieu of confiscation resulting

in the release of property. For one thing, such a release cannot be regarded as a transfer of property by the Government to the importer after

obtaining title to it; as if the confiscation had become effective. Secondly, the mere fact that there is a decision to confiscate does not necessarily

mean that confiscation has been made and vesting of the property u/s 184 has taken place. The decision to confiscate under sections 182 and 183

has to be followed by the exercise of the discretion by the officer as to whether the confiscation has to be maintained or a fine imposed in lieu of it.

It is true that an order u/s 183 can be passed only after adjudging confiscation. But, nevertheless, it is significant that the statute requires as a part

of the very order adjudging confiscation an order permitting redemption of the goods. If therefore, the Authority gives the importer an option of

paying fine and such option is exercised, it can be said that the adjudging of

confiscation does not become effective, with the consequence that the property continues to remain that of the importer. . Such property having been imported by him, will," be liable to duty.

13. Again liability to duty is attracted the moment the goods are imported. Import implies receiving of the goods across the customs frontiers: vide

Item No. 41 of List I of the Seventh Schedule to the Constitution, u/s 3-A of the Sea, Customs Act, the Central Government is empowered to

define the customs frontiers of India. By a notification dated 6-8-1955 the customs frontier has been defined by the appropriate authority to be

the boundaries of the territory of India including territorial waters"".

14. Therefore, the liability imposed on imported goods will attach the moment the goods cross the frontier, that is even before unloading from the

ship. In Asbury's Laws of England (Third Edition), Volume 33, page 138 it is stated:

The time of importation of any goods is deemed to be, where they are brought by sea, the time when the ship carrying them comes within the

limits of a port"".

15. The ad judgment of the confiscation on the ground that the import of the goods has been prohibited, can take place only later, that is, after the

goods are imported. If confiscation takes place, it will undoubtedly free the goods from liability to duty as the goods would belong to the

Government. But if the confiscation is avoided, there is no principle by which the liability imposed by section 20 will be discharge by the mere fact

that a fine had been imposed tinder the provisions of section 183. The levy of duty u/s 20 will have necessarily to be irrespective of the fact

whether the importation is authorised or unauthorised. As a fiscal provision, that section has to be applied when once there has been an

importation. If the import is unauthorised or prohibited, the other consequences prescribed by the statute might follow. That will be independent of

the liability to duty imposed under the Act. To hold otherwise would lead to an anomaly, namely, that while goods lawfully imported into the

country will suffer duty, those smuggled will escape it, the smuggler getting the advantage of not paying the duty, if he were to pay the fine u/s 183.

This anomaly will all the more be apparent in the case of importation of prohibited goods under the Sea Customs Act, where the Authority is

bound to give an option to the importer to pay fine in lieu of confiscation. That would certainly not have been the intention of the Legislature.

16. Mr, S. K. L. Ratan appearing for the respondent referred us to the decision in Mrs. Dina Baldev Pathak Vs. The Collector of Customs, . That

was a case where there was a confiscation of the goods illegally imported and the consequent vesting of the same in the Government. It was held

that the goods subsequent to the order of confiscation could be dealt with by the, officer adjudging confiscation in such manner as he considered

appropriate. The learned Judge has observed that once there is a confiscation of the goods, they would cease to be offending goods. That may be

so. But the question in the present case is not what the character of the goods after confiscation will be, but rather what its character would be if

the confiscation had been avoided by payment of fine.

17. The learned Advocate-General has contended" that the liability to duty imposed u/s 20 will be a. personal one on the importer and

consequently what is done to the goods, e. g., confiscation will not have the effect of discharging that liability. In other words, the contention of the

learned Advocate-General is that even if there had been a confiscation of the goods, there would still be a liability on the importer to pay duty. In

support of that contention he referred to the following passage: in the judgment of Higgins, J., in Attorney-General of New South Wales v.

Collector of Customs for N.S.W., 5 CUR 858.

But is a customs tax a tax on property as such? The Customs Tariff 1902 speaks of "duties ... on.....goods" and the expression is roughly

accurate although probably if fully expressed it would be a tax on persons in respect of the importation of goods; just as property tax is usually,

though not necessarily, a tax on persons in respect of their property. A customs tax is a tax not on property as such) but on persons in respect of

the act of importation. There is a fundamental difference between taxing men for having property and taxing men for moving property and in

particular for moving property into a country from overseas (..... . ). But when the Commonwealth imposes a Customs duty, the duty is not

payable unless it be attempted to move the goods from London to Australia.

Mr. Ratan, on the other hand, contends that this is not the law in India. According to him the levy of any tax should have a statutory basis and there

being no such basis for making the importer personally liable to import duty, the liability would, at best, go only with the property and no further.

Therefore, once the property is confiscated it is argued both the property as well as the importer will be free from all obligations to pay duty. In this

connection learned counsel referred to the provisions contained in section 88 of the Sea Customs Act, which, while dealing with case of goods not

cleared, provides for the sale thereof, the surplus sale proceeds if any, after meeting the charges specified therein being made payable to the

owners. It is said that there is no corresponding provision, in that section in the case of deficiency of sale proceeds of the goods to cover the duty

or the importer to pay anything to the Government. In the view we are taking in this case, namely, that the confiscation will be avoided on payment

of the fine (as indeed the respondent proposes to pay) it will be unnecessary to decide this point.

18. It is argued on behalf of the respondent that the Customs Authorities have no right to impose a duty, as the *stagi*½ at which they could do

SO" was immediately after the bill of entry was filed and not later. This argument is developed by recourse to sections 29-A and 29-B of the Act,

and stating that apart from the cases referred to therein, there will be no right 10 levy any duty for a second time. There is a fallacy in this argument.

There has been no levy of duty as yet. What has taken place so far is the imposition of administrative punishment by way of adjudging confiscation

of the property, for the illegal importation of the goods. The question of imposition of duty will arise only when the confiscation is avoided by

payment of fine.

19. It is then argued that the penalty imposed in the instant case should be deemed to include the duty as well. There is no basis for this contention

in the order of the Collector of Customs. As we have shown earlier, the Authority to levy import duty need not be the same as the one judging

confiscation and imposing a fine in lieu thereof. It may be that in the instant case both the Authorities happen to be the same. But the validity of the

argument has got to be tested with reference to cases where the Authorities may be different. Suppose, the two Authorities are not the same, can

the latter Authority, that is, that which directs the confiscation of the property, impose duty and include it in the fine or even waive the fine (duty?)

(sic). The answer will undoubtedly have to be in the negative. Again, if even one were to assume that the Authority adjudging confiscation can

impose the levy of or waive the duty, the Government will certainly not be bound by his act and will not be precluded from collecting the duty from

the importer in terms of the statute.

The question how far the Government would be bound by an act or representation of its officers fell to be considered by the House of Lords in

Howell v. Falmouth Boat Construction Co. Ltd., 1951 AC 837. In the Court of Appeal, Denning, L. J., gave expression to the view that

whenever government officers, in their dealings with a subject, took on themselves to assume authority in a matter with which he was concerned,

the subject would be entitled to rely on their having the authority which they assume. This theory was not accepted by the House of Lords. Lord

Simonds declined to recognise any such principle and observed:

The illegality of an act is the same whether or not the actor has been misled by an assumption of authority on the part of a government officer

however high or low in the hierarchy. I do not doubt that in criminal proceedings it would be a material factor that the actor had been thus misled if

knowledge was a necessary element of the offence, and in any case it would have a bearing on the sentence to be imposed. But that is not the

question. The question is whether the character of an act done in face of a statutory prohibition is affected by the fact that it has been induced by a

misleading assumption of authority. In my opinion the answer is clearly no. Such an answer may make more difficult the task of the citizen who is

anxious to walk in the narrow way. but that does not justify a different answer being given.""

Lord Norm and in dealing with the view of Denrings, I., J., observed:

As I understand this statement, the respondents were, in the opinion of the learned Lord Justice;, entitled to say that the Crown was barred by

representations made by Mr. ""Thompson and acted on by them from alleging against them a breach of the statutory order, and further, that the

respondents were equally entitled to say in a question with the appellant that there had been, no breach. But it is certain that neither a minister nor

any subordinate officer of the Crown, can by any conduct or representation bar the Crown from enforcing a statutory prohibition or entitle the

subject to maintain that there has been no breach of it.

In *Secy. of State v. Kasturi Keddi*, ILR 26 Mad 268 Rhafhyam Ayyangar, J., discussing the distinction between a private agent binding his

principal and a public agent binding the Government, cited the following passage from Story in his "Law of Agency":

In respect to the acts and declarations and representations of public agent it would seem that the same rule does not prevail which ordinarily

governs in relation to mere private agents. As to the latter the principals are in many cases bound where they have not authorised the declarations

and representations to be made. But in the case of public agents, the Government or other public authority is not bound unless it manifestly appears

that the agent is acting within the scope of his authority or he is held out as having authority to do the act or is employed in his capacity as public

agent to make the declaration or representation for the Government. Indeed, this rule seems indispensable in order to guard the public against

losses and injuries arising from the fraud or mistake or rashness and indiscretion of their agents. "By the law of agency at the common law there is

difference between individuals and the Government - the former are liable to the extent of the power they have apparently given to their agents,

while the Government is liable only to the extent of the power it has actually given to its officers.

The Authority invested with the power of confiscating the goods u/s 182 cannot therefore bind the Government by any representation or order by

which it purports to allow the importer to obtain delivery of the goods without payment of duty. The proper Authority to levy duty will be the

Collector of Customs. It will follow from this that the imposition of the fine cannot be regarded as including within it or remitting the duty payable,

unless such duty has been levied by the appropriate Authority and excessively included in the former.

20. The learned Judge has held that the decisions in *Shewpujanrai Indrasanrai Ltd. Vs. The Collector of Customs and Others*, and *Amba Lal v.*

*Union of India*, AIR 1961 SC 264 would support the view that once a fine is levied u/s 183 and paid, the Government could not legitimately call

upon the party to pay duty. But those cases related not to an importer but to a person other than the importer concerned in the illegal importation

of the goods, He being not the owner of the goods, there was no liability on his part to pay the customs duty: if such a person" was required to pay

fluty it will be illegal. For; the reasons stated by us earlier, we are of opinion! that there having been an imposition of fine ins lieu of confiscation,

there has been no actual! confiscation of the goods so as to vest title in the Government in respect thereof and the goods are" in the position of

being liable to be redeemed by [ the importer on payment of fine. To such goods there will be a liability to pay customs duty, inasmuch as the

goods had admittedly been imported into this country by sea. Secondly the imposition of fine only validates the import and it will have! no further

effect of absolving the importer from payment of customs duty. That liability is independent of the liability to pay fine in lieu of confiscation and will

therefore subsist. The Collector of Customs in our opinion was justified in declining to deliver the goods unless the duty was paid.

21. The appeal is therefore allowed. The respondent will pay the costs of the appellant.