

(1993) 10 MAD CK 0015
In the Madras High Court

The Collector of Customs

APPELLANT

Vs

Madras Electric Castings P. Ltd.

RESPONDENT

Date of Decision : 13-10-1993

Acts Referred:

Customs Act, 1962 — Section 111(m)

Citation : (1994) 1 MLJ 664

Hon'ble Judges : K.A. Swami, C.J

Bench : Division Bench

Judgement

K.A. Swami, C.J.—This appeal is preferred against the order dated 27.09.1993 passed in W.P. No. 16738 of 1993. Learned single Judge

has allowed the writ petition and issued the following direction to the Customs, Excise and Gold (Control) Appellate Tribunal:

Taking the above into consideration, I direct the release of the subject goods pending the filing of the appeal before CEGAT on the following

conditions:

- (1) The petitioner should pay the differential duty in cash to the tune of Rs. 2 lakhs.
- (2) The petitioner should furnish a book guarantee to the tune of Rs. 2 lakhs.
- (3) The petitioner is permitted to give a personal bond, as provided in the Customs Act, for the balance of the differential duty, redemption fine and penalty.

The writ petition is ordered on the above terms.

There will be no order as to costs. This order is subject to the final order of the CEGAT.

2. At the outset, it may also be pointed out that the learned single Judge has

recorded a clear finding in the following terms:

The petitioner is said to be a well known importer of scrap metal shellings from Singapore and other countries. In respect of the Bill of Entry dated

25.6.1993 relating to a total of 138.83 mts. of scrap metals, there was an inspection and it was found that they contained stainless steel scrap also.

In fact a total of 95 MT was said to comprise of such stainless steel scrap. There are two types of stainless steel metal scraps, one being magnetic

stainless steel and the other being non-magnetic stainless steel, it is admitted that the nonmagnetic stainless steel is superior and costlier. The goods

in question comprised of magnetic stainless steel scrap. The only question, therefore, it as to the value of the goods for the purpose of customs

duty. For this, the petitioner had relied on the quotation given by M/s.The Projects and Equipments Corporation of India (Government of India

undertakings), New Delhi. This is rejected by the Collector on the ground that it is only a quotation for sale and not actual price. The first

respondent has proceeded to consider the price quoted by , several companies ranging between US \$ 550 and \$ 850 BT. According to the

petitioner, these relate to the prime quality of stainless steel. After considering all the points, the first respondent comes to the conclusion that the

value of the subject goods should be determined for the purpose of duty at US \$330/MT CIF. In other words, the assessable value is worked out

at Rs. 10,14,597. Consequently, the order of the first respondent has directed confiscation of 96.65 MT of stainless steel scrap and has permitted

the release of the goods on payment of redemption fine of Rs. 1,50,000 and imposed penalty of Rs. 30,000 on the petitioner. The differential duty

on the subject goods worked out at Rs. 5,43,126."" Thus, without deciding the validity of the order dated 3.9.1993 passed by the respondent,

against which an appeal is provided to CEGAT the order under appeal is passed directing the release of the goods. The Collector on examining

the relevant material has passed the order dated 12th August, 1993 dispatched on 3rd September, 1993, in No. 58/217/93 CR 3 & 4, 859/83/93

3 & 4 in the following terms:

In the light of above facts and is the absence of any reliable evidence there is no option but to determine the value for assessment on reasonable

means in terms of Rule 8 of the Customs Valuation Act and is accordingly

determined at US \$330/MT CIF. Accordingly, the assessable value works out to Rs. 10,14,597. The stainless steel scrap is not assessable under Heading 7204.49/7204.90 and also not eligible for confessional assessment under Customs Notification 83/90 as amended. The impugned goods are correctly assessable under Custom Tariff Heading 7204.21 and Central Excise Tariff Heading 7204.20, with Customs Notification 150/81 as amended at the rate of 50% ad valorem, + 12.5% CVD. The differential duty works out to Rs. 5,43,126. Thus there has been an attempt to evade customs duty to the extent of Rs. 5,43,126. Therefore, the goods are liable for confiscation u/s 111(m) of the Customs Act, 1962 and the importer is also liable for penalty u/s 112(a) of the Customs Act, 1962. I also note that they are actual users. Accordingly, I pass the following order:

I direct that 96.65 MT of stainless steel scrap contained in five of the seven containers covered by Bill of Entry No. 21954, dated 25.6.93 and referred to above, be classified under heading Customs Tariff Act. 724.21 and Central Excise Tariff Act 7204.20 and be charged to duty at appropriate rates.

I also order that the impugned goods, namely 96.65 MT of stainless steel scrap (magnetic type) be assessed on a value of US \$ 330/Mt. CIF.

In order confiscation of the above said 96.65 MT of stainless steel scrap contained in five containers covered by the B.E. No. 21954 dated

25.6.1993 referred to above u/s 111(m) of the Customs Act, 1962. However, taking into account the entire facts and circumstances of the case, I

order the release of goods, on payment of redemption fine of Rs. 1,50,000 (Rupees one lakh fifty thousand only), u/s 125 of the Customs Act,

1962, the fine will be in addition to the duty payable at appropriate rates. I also impose a penalty of Rs. 30,000 (Rupees thirty thousand only) on

the importer, M/s. Madras Electro Castings Pvt. Ltd., Madras, u/s 112(a) of the Customs Act, 1962.

3. The aforesaid order of the Collector is appealable and an appeal lies to the Customs, Excise and Gold (Control) Appellate Tribunal (for short

CEGAT) u/s 129-A of the Customs Act, (hereinafter referred to as the Act). It is submitted by learned Counsel for the respondent in the appeal

that such an appeal is preferred before the Customs, Excise and Gold (Control)

Appellate Tribunal. The conditions for preferring an appeal are stated in Section 120-B of the Act, thus:

Section 120-B, Deposit, pending appeal, of duty and interest demanded or penalty levied : Where in any appeal under this Chapter, the decision

or order appealed against relates to any duty and interest demanded in respect of goods which are not under the control of the customs authorities

or any penalty levied under this Act, the person desirous of appealing against such decision or order shall, pending the appeal, deposit with the

proper officer the duty and interest demanded or the penalty levied : Provided that where in any particular case, the Collector (Appeals) or the

Appellate Tribunal is of opinion that the deposit of duty and interest demanded or penalty levied would cause undue hardship to such person, the

Collector (Appeals) or as the case may be, the Appellate Tribunal may dispense with such deposit subject to such conditions as he or it may deem

fit to impose so as to safeguard the interests of revenue.

Thus, from the aforesaid provisions contained in Section 129-B of the Act, it is clear that along with the appeal, the appellant is required to deposit

the duty and interest as demanded in respect of the goods not being under the control of the customs authorities and the penalty as levied. If the

appellant is not in a position to deposit, and compliance with the condition laid down in Section 129-B of the Act is going to cause undue hardship

to him, the proviso to Section 129-B of the Act enables him to make an application to the CEGAT, requesting it to relieve him of the undue

hardship. In such an event, if the CEGAT is satisfied, it is open to the CEGAT to dispense with such deposit, subject to such conditions as it may

deem fit to impose so as to safeguard the interests of the Revenue. In the appeal, the CEGAT after hearing the parties, may pass orders thereon as

it thinks fit, confirming, modifying or annulling the decisions or order appealed against or it may refer the case back to the Authority which passed

such decision or order with such directions as it may think, fit for a fresh adjudication or decision on the case may be, after taking additional

evidence if necessary.

4. The ground on which the respondent/petitioner has approached this Court under Article 226 of the Constitution of India is that in an appeal

preferred against the order of the Collector u/s 129-A of the Act, the CEGAT has

no power to pass on interim order, directing the release of the goods, therefore, the respondent/petitioner has no remedy, hence it has become necessary for it to approach this Court to seek a relief of interim

nature. Along with Section 129-B of the Act, Rule 41 of Customs, Excise and Gold (Control) Appellate Tribunal (Procedure) Rules, 1982 has to

be read which empowers the Tribunal to pass interim orders.

5. Before considering the question as to whether the CEGAT has got power to pass an interim order, it is to be seen whether in exercise of the

jurisdiction under Article 226 of the Constitution, without deciding the correctness of the order of adjudication, this Court can direct the release of

the goods, which are confiscated and in lieu of confiscation, the party is permitted to redeem the same on payment of redemption fine. In the writ

petition, it is not the order of the Collector that is challenged. Only a writ in the nature of mandamus is sought directing the collector to release the

goods. No adjudication on the merits of the order passed by the collector is sought. It is already pointed out that the order passed by the Collector

is appealable and an appeal lies to the Customs, Excise and Gold (Control) Appellate Tribunal, which can confirm, modify or annul the decision of

the Collector appealed against. Further, if the appellant is not able to deposit the duty, penalty or the interest as the case may be, it is open to him

to seek an order from the CEGAT to relieve him from the undue hardship that could be caused, if the deposit has to be made. It is a settled

position of law that jurisdiction under Article 226 of the Constitution of India cannot be exercised to circumvent or by-pass the remedy of statutory

appeal and only for the purpose of granting a relief of an interim nature, without deciding the subject matter of the dispute. Further, an interim relief

can be granted to preserve in status quo the rights of the parties, so that the proceedings do not become infructuous by any unilateral overt acts by

one side or the other during its pendency of the proceeding, see *Kihoto Hollohan v. Kachillhu* (1992) 2 S.C.C. 651. In the instant case, if the

interim relief granted in the writ petition without deciding the validity of the order of confiscation is allowed to remain in force, the confiscated goods

will be released to the party who will dispose them off in the open market or in other manner, thereby the goods could not be available for

confiscation which will result in infructualising the order of confiscation. The

jurisdiction under Article 226 of the Constitution of India shall not be exercised in such a case and in such a manner which will result in defeating the object of the law and causes loss to the public Revenue and does not advance the cause of justice.

6. A similar question arose before the Supreme Court in *The State of Orissa Vs. Madan Gopal Rungta*, . In that case, the High Court directed the authorities by issue of a writ in the nature of mandamus not to evict the petitioner therein from the mining quarry for a period of 90 days to enable the petitioner to file a suit after issuing notice u/s 80, Code of Civil Procedure, 1908. The Supreme Court while allowing the appeal preferred by the State, held thus:

In our opinion, Article 226 cannot be used for the purpose of giving interim relief as the only and final relief on the application as the High Court has purported to do. The directions have been given here only to circumvent the provisions of Section 89, Civil P.C. and in our opinion that is not within the adopt of Article 226. An interim relief can be granted only in aid of and on ancillary to the main relief which may be available to the party on final determination of his rights in a suit or proceeding. If the court was of opinion that there was no other convenient or adequate remedy open to the petitioners, it might have proceeded to investigate the case on its merits and come to a decision as to whether the petitioners succeeded in establishing that there was an infringement of any of their legal rights which entitled them to a writ of mandamus or any other direction of a like nature and pending such determination it might have made a suitable interim order for maintaining the status quo ante. But when the court declined to decide on the rights of the parties and expressly held that they should be investigated more properly in a civil suit, it could not for the purpose of facilitating the institution of such suit, issue directions in the nature of temporary injunction under Article 226 of the Constitution. In our opinion, the language of Article 226 does not permit such an action. On that short ground, the judgment of the Orissa High Court under appeal cannot be upheld.

7. Therefore, it is clear that jurisdiction under Article 226 of the Constitution cannot be exercised only for the purpose of granting the relief of interim nature, when the main matter is to be decided by another authority and

further consequence of granting such interim relief is to infructuate the very order of confiscation as pointed out above.

8. In addition, to this, it may also be seen as to whether the Customs, Excise and Gold (Control) Appellate Tribunal has jurisdiction to issue interim orders. It may be pointed out here that Section 129-B of the Act empowers the Customs, Excise and Gold (Control) Appellate Tribunal to confirm, modify or annul the decision or order appealed against. It is also open to it to remit the matter back for fresh adjudication. In addition to this, Rule 41 of the Customs, Excise and Gold (Control) Appellate Tribunal (Procedure) Rules, 1982 specifically provides that the Tribunal may make such orders or give such directions as may be necessary or expedient to give effect or in relation to its orders or to prevent abuse of its process of to secure the ends of justice. The words "secure the ends of justice" are wide enough to clothe the Tribunal with powers to pass such interim orders, as it may deem fit in the facts and circumstances of the case. In addition to this, the power of Appellate Tribunal to confirm, modify or annul the decision or order appealed against also takes in its fold to pass such interim orders as are necessary in order to aid the main relief sought for in the appeal. To put it in other words, the interim relief is granted to preserve status quo the rights of the parties see *Kihoto Hollohan* (1992) 2 S.C.C. 651. In *The State of Orissa Vs. Madan Gopal Rungta*, it has been pointed out that the interim orders are passed in aid of the main relief. Therefore, it is quite inherent in the Appellate power and more so in the case of the CEGAT to pass such interim orders as are necessary for the purpose of ensuring that the main relief sought in the appeal is available to the party at the end of the proceeding. The fact that Section 129-B only provides for relieving the appellant from the undue hardship that would be caused to him in depositing the duty and interest as demanded or penalty as levied; does not in anyway take away the inherent power of the Appellate Tribunal to pass such interim orders as are necessary. This is only re-stated in Rule 41 of the Customs, Excise and Gold (Control) Appellate Tribunal (Procedure) Rules, 1982. Therefore, the contention of the learned Counsel for the respondent/writ petitioner that there is no power vested in the Customs, Excise and Gold (Control) Appellate Tribunal to pass an interim order directing the release of the goods,

therefore, it has become necessary to approach this Court for relief, cannot be accepted. However, the CEGAT while passing interim order, it has to bear in mind the interest of both the parties and availability of goods if the same are to be confiscated at the end of the proceedings, unless the goods are of such nature which are subject to natural decay or perishable, in such a case, it has to pass appropriate order for disposal.

9. We may also point out here that even otherwise also, it would not be just and appropriate for this I Court to entertain the writ petition, because the order is appealable to the Customs, Excise and Gold (Control) Appellate Tribunal, which can go into questions of fact and law and can set aside or affirm or annul the order or remand it for fresh consideration. The order passed by the Customs, Excise and Gold (Control) Appellate Tribunal can also be challenged before the Supreme Court. When there is efficacious alternative remedy provided, it would not be just and appropriate for this Court even to adjudicate upon the validity of the Order of the Collector. Even otherwise, the validity of the order of Collector cannot appropriately be adjudicated ignoring the appeal provision. There would be no reason whatsoever to pass an order for directing the release of the confiscated goods, without adjudicating the validity of the order of the Collector, directing confiscation of the goods. It may be pointed out that directing or releasing of the goods would arise only, if it is found that the confiscation ordered is not sustainable. The redemption of the goods can be allowed only if the goods are to be confiscated. Therefore, without going into the validity of the confiscation order, the direction of the nature issued in the writ petition is not permissible.

10. It is also argued before us that it has become almost a practice in this Court to entertain such petitions and grant the relief, therefore, there is no reason for distinguishing the case on hand from all other cases, in which such a direction has been issued. In support of this, learned Counsel appearing for the respondent/writ petitioner has produced as many as 12 orders passed by this Court in 12 different matters. One of them is also passed by a Division Bench of this Court. We shall first take up the judgment passed by a Division Bench of this Court in W.A. No. 1171 of 1990. The judgment reads thus:

This writ appeal is directed against the order of the learned single Judge W.P. No.

17102 of 1.990 decided on 12.11.1990. 2. We have perused the order and we find that while refusing to adjudicate on the question of correctness or otherwise of the assessment and leaving it to the writ petitioners to take recourse to the statutory appeal, the learned single Judge with a view to meet the existing situation, made an interim arrangement and gave the following directions:

It is now reported that an assessment has been made and a duty of Rs. 3,25,000 has been claimed from the petitioners. On the basis of the preliminary investigation the respondents estimated the differential duty to be paid in the range of Rs. 9,00,000. I permit the respondents to take such action as called for by issuing a show cause notice. Inasmuch as there is an assessment of the goods and the claim for duty to the tune of Rs. 3,25,000 and a differential duty estimated at Rs. 9,00,000.1 direct that on payment of the duty of Rs. 3,25,000 plus a bank guarantee of 25 per cent of differential duty and payment of cash to the tune of 25 per cent of differential duty and a personal bond for the balance. In other respects, it is open to the parties to file on appeal and seek relief. The goods will be released on the above conditions.

The directions given by the learned single Judge in the facts and circumstances of the case do substantial justice between the parties. The interest of the Revenue has been adequately safeguarded and at the same time the interest of the writ petitioner has also been safeguarded. We find that the discretion exercised by the learned single Judge cannot be termed as unreasonable much less perverse. There is therefore no ground for us to interfere with the impugned order. The writ appeal fails and is dismissed." Thus, it is clear that in the aforesaid decision, the question which we have considered, has not been decided. It has been only pointed out that the directions given by the learned single Judge in the facts and circumstances of the case do substantial justice between the parties. Inasmuch as interest of the Revenue has been adequately safeguarded, at the same time interest of the petitioner has also been safeguarded. Therefore, it is clear that except directing the release of the goods, no decision has been rendered on the question as to whether without going into the merits of the order passed by the Collector, a direction of the nature can be issued.

In all other decisions which have been rendered by learned single Judge in

W.M.P. No. 13507 of 1986 in W.P. 9213 of 1988, dated 26.08.1988, C/83/1579/89 in AC/55/858/89 dated 21.08.1990. CEG AC. W.P. No. 15980 of 1990 dated 31.1.1990, W.P. No. 15980 of 1990, dated 11.10.1990, W.P. No. 17448 of 1990 dated 15.11.1990, W.A. No. 1517 of 1991 dated 19.12.1991. W.P. No. 494 of 1992 dated 30.1.1992.

W.P. No. 5496 of 1992 dated 28.4.1992, W.M.P. No. 12164 of 1992 in W.P. No. 8430 of 1992 dated 30.6.1992. Rev. Application Nos. 38 and 39 of 1992 dated 31.07.1992, W.P. No. 11563 of 1991 dated 13.8.1992 and W.P. No. 13552 of 1992 dated 17.9.1992. The point in question has not been considered a direction is issued only on the assumption that such an order cannot be passed by the Tribunal, pending disposal of the appeal. Therefore, in none of the decisions, the question as to whether such a relief without deciding the correctness of the order of the Collector can be granted, has not even been considered. Therefore, we are of the view that the practice that has been followed so far, does not accord with the position of law. Exercising of jurisdiction under Article 226 of the Constitution in such manner is quite contrary to the decision of the Supreme Court in *The State of Orissa Vs. Madan Gopal Rungta*, and it is opposed to the provisions of the Customs Act. Hence, we are of the view that the aforesaid decisions cannot be held to have laid down a valid and binding precedent and the same are apposed to the decisions of the Supreme Court referred to above as such the said decisions cannot be accepted as laying down a law enabling this Court to exercise jurisdiction under Article 226 of the Constitution in a case where the order of the Collector confiscating the goods and permitting redemption on payment of redemption fine, is challenged before the CEG AT and the writ petition is filed seeking a direction to release the goods, without going into the merits of the decision rendered by the Collector. Now that we have held that the Tribunal has got the power to pass appropriate interim orders including an order directing to release the goods, it is deemed fit in the facts and circumstances of the case, it is open to the respondent/writ petitioner to approach the tribunal for appropriate relief.

11. For the reasons stated above, this writ appeal is allowed. The order dated 27.9.1993 passed in W.P. No. 16738 of 1993 is not aside. It is also further declared that the decision rendered in the aforesaid writ petition

cannot be considered as laying down any law or binding precedent for exercise of jurisdiction under Article 226 of the Constitution in a matter like this. No order as to costs.