

(1973) 04 DEL CK 0013

In the Delhi High Court

Case No : Regular First Appeal No. 110D of 1964

Union of India

APPELLANT

Vs

Pitam Chand (Deceased) through his Lrs.

RESPONDENT

Date of Decision : 23-04-1973

Acts Referred:

Citation : (1973) ILR Delhi 523 : (1973) RLR 571

Hon'ble Judges : S.N. Shankar, J; Narain Andley, J

Bench : Division Bench

Advocate : B. Kirpal, S. Deshpande, B.R. Aggarwal, J. Lal and K.N. Kataria, for the Appellant;

Judgement

S.N. Shankar, J.

(1) Pitam Chand, respondent in this regular first appeal, was the holder of an Import Trade Control license No. 0063384/56/CCI/D dated December 30, 1956 for the Licensing period from July to December, 1956, permitting importation of Motor Vehicles Part covered by entries Nos. 293, 295 and 297 (Part IV) of the Import Trade Regulation of the corresponding period. On the strength of this license, he imported a consignment of 64500 pairs of auto pedals 3-2/4" C.P. for N.S.U. and/or Lambretta motor cycles which arrived at Madras on or about January 28, 1958. The consignment was not allowed clearance. On February 26, 1958, Assistant Collector of Customs, Madras, issued a show-cause notice stating that the importation was not covered by the license as the goods were covered by item No. 75 (8) of the Indian Customs Tariff corresponding to Serial No. P. Iv 301 of the I.T.C. Schedule. The respondent showed cause but the Collector of Customs by order dated May 1, 1958 confiscated the goods and allowed an option to the respondent to clear them for home consumption on payment of a fine of Rs. 1,00,000.00 (Rs. One lakh only). The respondent deposited this, amount under protest and appealed to the Central Board of Revenue. By order dated June 8, 1959, the Board dismissed the appeal. Revision to the Central Government was also dismissed by order dated May 24, 1960. On December 11,

1961, the respondent Therefore, filed the suit against Union of India, the appellant before us, praying for a declaration that the aforesaid orders passed by the Collector of Customs, Central Board of Revenue and the Central Government were illegal, inoperative, ultra virus and null and void, on the ground, amongst others, that the Collector acted beyond jurisdiction in holding that the imported goods were not covered by the license and that this conclusion was based on undisclosed material and without application of mind and consideration of the evidence. He also prayed for a decree for the refund of Rs. 1,00,000.00, paid by him under protest, with interest. The suit was contested by the appellant. It was maintained that the orders assailed were perfectly legal and the suit was barred under the Sea Customs Act and Imports and Exports Act, 1947 and also by limitation. On the pleadings, the trial court framed the following issues:-

(1) Whether the suit is barred under Sea Customs Act and Imports & Exports Act ? (2) Whether the suit is time barred as per allegations in the plaint ? (3) Whether the three orders dated May 1, 1958, June 8, 1959 and May 24/30, 1960 are illegal, invalid, ultra vires, without and/or in excess of jurisdiction, null and void and disclose errors apparent on the face of the record on all or any of the grounds set out in para 14 of the plaint ? (4) If issue No. 3 is proved, whether the plaintiff is not entitled to the refund of the money paid by him by way of penalty, and how much ? (5) Whether the plaintiff is entitled to any interests ? If so, at what rate and for what period ? (6) Relief?

(2) The court found issues 1 and 2 in favor of the respondent. Under issue No. 3, the court held that the Collector had acted in excess of his jurisdiction in reaching the conclusion that the goods were not covered by the license and that there was also violation of principles of natural justice in as much as the Collector in arriving at the conclusion that the import was unauthorised took into consideration facts of which no notice was given to the respondent thereby contravening principles of natural justice. Under issue No. 4, it was held that the respondent was entitled to the refund of the fine imposed by the impugned order. Under issue No. 5, the court held that no case for the grant of interest was made out. A decree for Rs. 1,00,000.00 (Rupees one lakh) only was, Therefore, granted in favor of the respondent leaving the parties to bear their own costs.

(3) Aggrieved from this judgment and decree, Union of India has filed this appeal and the respondent Pitam Chand has filed cross objections. The cross-objections are confined to the order refusing costs of the suit.

(4) Shri B. N. Kirpal, appearing for the Union of India, has urged that the Sea Customs Act being a complete code by itself, the civil court had no jurisdiction to determine the validity of the order passed by the Collector under this Act. The customs authorities, he said, were the final Judge to decide as to the entry which covered the goods imported and it was not open to the civil court to examine the merits of this decision.

(5) As stated earlier, the license granted to the respondent was for the

importation of Motor Vehicles parts covered by Serial Nos. 293, 295 and 297 of Part IV of the Import Trade Control Regulations. Entry 297 envisaged importation of parts of mechanically propelled vehicles and accessories. The imported pedals, it was not dispute at any stage, could be used as pedals for certain types of auto cycles. The auto cycles, it is also conceded, are mechanically propelled vehicles. They were, Therefore, fully covered by entry 297. The Collector, in his order dated May 1, 1958, also took the same view to this extent but went on further to hold that the quantity imported indicated that the purpose of importation was to use them as pedals in push cycle. The relevant part of his order in this respect reads as under :-

"I am quite prepared to accept the importer's claim that these pedals can be fitted as replacements on certain types of auto cycles. But the total No. of auto cycles of these types in use in India is small. This one consignment alone comprises 64500 pairs and it is quite impossible that more than a few pairs will actually be fitted to auto cycles replacements. The only possible use for pedals of this standard type in quantities corresponding to the quantities imported is as pedals for push cycles."

(6) Proceeding on this basis the Collector held :-

".....THE goods imported are intended for use on push cycles only. That they can also be fitted on certain types of auto cycles is irrelevant and does not alter their character either for assessment or for I.T.C. license".

(7) In our view the Collector in this respect misdirected himself as to the scope of his jurisdiction and the scope of enquiry before him. If the imported goods were found to be covered by the license under which they were imported, it was wholly irrelevant to go further to make surmises and to conclude that they could as well be covered by another entry with reference to the other use to which they could be put unless it was so indicated in the entry itself. After the finding that the pedals could be used as replacements to certain types of auto cycles, which are mechanically propelled vehicles, the inevitable conclusion was that they were covered by entry 297 and the import was legitimate. By holding that a licensee under this entry could import only as many parts of the mechanically propelled vehicles as were actually needed for replacements, the Collector introduced a clause in the entry 297 which is not there. This obviously he had no jurisdiction to do. In our view, Therefore, the Collector acted without jurisdiction in holding that even though the goods were covered by entry 297 still the import was unauthorised for the reason mentioned in the order.

(8) We find support for this view from the decision of the Supreme Court in Union of India (UOI) Vs. Tarachand Gupta and Bros, . The respondents' license in that case authorised them to import goods covered by entry 295 and they imported certain goods which arrived in two different consignments and on two different dates. The Collector of Customs and the Central Board of Revenue put the two consignments together and held that the goods imported, when put

together, constituted articles prohibited under entry 294 and directed their confiscation. The respondents filed a suit in the High Court which was dismissed but the appeal by Union of India, by Special Leave, the Court held that the only question before the Collector was whether the respondents' license covered the goods imported by them or not or whether they were parts and accessories of motor cycles and scooters covered by entry 295. If they were the imports were legitimate and there was no question of the respondents having committed breach of section 3 of Imports and Exports (Control) Act or section 167(8) of the Sea Customs Act. After noticing that entry 295 contained no restrictions or limitations against import of parts and accessories, Shelat, J. speaking for the Court said :-

" THAT being so, if an importer has imported parts and accessories, his import would be of the articles covered by entry 295. The Collector could not say, if they were so covered by entry 295, that, when lumped together, they could constitute other articles, namely : motor cycles and scooters in C.K.D. condition. Such a process, if adopted by the Collector, would mean that he was inserting in entry 295 a restriction which was not there. That obviously he had no power to do. Such a restriction would mean that though under license in respect of goods covered by entry 295 an importer could import parts and accessories of all kinds and types, he shall not import all of them but only some, so that when put together they would not make them motor cycles and scooters in C.K.D. condition..... That would be tantamount to the Collector making new entry in place of entry 295 which must mean non-compliance of that entry and acting in excess of jurisdiction during the course of his enquiry even though he had embarked upon the enquiry with jurisdiction."

(9) The finding of the Collector in the instant case, Therefore, that the pedals imported by the respondent could be fitted as replacements to certain types of auto-cycles finally clinched the matter and the further considerations that he took into account were irrelevant and beyond the scope of the enquiry before him.

(10) This being the position, the order of the Collector confiscating the goods was not an order under the Act and as held by the Supreme Court in Tarachand Gupta's case (supra) the Collector acted in excess of jurisdiction during the course of his enquiry which he had the jurisdiction to conduct. The order passed by him, for this reason was void and not one under the Act with the result that no finality could be pleaded in respect of such an order. The submission, Therefore, that the order of the Collector was an order under the Act and so could not be assailed in the civil court, has no merits.

(11) Shri Kirpal placed reliance on the The Collector of Customs, Madras Vs. K. Ganga Setty, and urged that it was primarily for the Import Control authorities to determine the head or entry in tariff schedule under which any particular commodity fell; and if there were two constructions which an entry could reasonably bear, and one of them which was in favor of Revenue was adopted.

the Court had no jurisdiction to interfere merely because the other interpretation favorable to the subject appealed to the court as the better one to adopt. The question in this case was as to the proper classification of "oats" imported by the respondent. The respondent maintained that they were covered by item 42 of the Import Trade Control Schedule so that no license was required for their importation from the soft currency area whereas the Customs authorities maintained that they were "grain", not otherwise specified, requiring a license under item 32. The Assistant Collector, having regard to the nature and condition of goods imported, categorically held that they were covered by item 32. In these circumstances, the court held that as the "oats" did answer the description of "grain" in Item 32 the decision of the Customs authorities classifying them as "grain" under this item could not be held to be perverse and, Therefore, could not be interfered with. This case has no application to the facts before us because here there is no question of determination by the court as to the entry under which the imported goods were covered. As would be seen from the extracted part of the order, the Collector himself held that the pedals in question could be fitted as replacements on certain types of auto by entry 297.

(12) Reference was then made by the learned counsel to *Girdharilal Bansidhar Vs. Union of India (UOI)*, , where it was held that importers could not be permitted to do indirectly what they were forbidden to do directly. In this case the import of "Jackson type oval plate single bolt belt fasteners" was prohibited. The appellant was granted license to import nuts and bolts. The imported nuts and bolts were found to be "Jackson type oval plate single bolt belt fasteners". It was further found that these parts could have no use other than as components of the prohibited articles. It was in this situation that the Court said that the importation was rightly held to be unauthorised. This is not so in the present case. This authority also does not, for this reason, help the learned counsel.

(13) Shri Kirpal next contended that the suit was barred by time under Article 14 of the Limitation Act, 1908. This submission also is not correct because the Collector acted without jurisdiction in passing the order in question. We have already indicated how he misdirected himself in reading a limitation in entry 297 which was not there and for this reason exceeded his jurisdiction. We further find from the record, as held by the trial court also, that the Collector acted in disregard of principles of natural justice. In para 14 of the plaint, respondent specified the grounds on which he challenged the order. In clause (b) of this para, he specifically alleged that the finding of the Collector was based on private enquiries made behind his back about which he was never told and which he never had the opportunity to meet. In answer to these allegations in para 14 of the written statement, even though refuting the allegations, it was admitted that on "market enquiries" it had been found that goods like the one imported were used by push cycles dealers as pedals and can effectively be used on push cycles. The record of the proceedings before the Collector was with the Customs Department. That record was not produced in court. Nor was any evidence led to indicate that the facts gathered as a result of this enquiry were apprised to the

respondent. The order was thus clearly vitiated for this reason also. The order, Therefore, was void and non est and the bar of Section 14 of the Limitation Act as held by the Supreme Court in Union of India (UOI) Vs. Tarachand Gupta and Bros, was not attracted.

(14) We now take up the cross-objections of the respondent regarding costs of the suit. We are, indeed, unable to see any reason why the respondent should have been deprived of his costs. The fact that he deposited the penalty of a lakh of rupees under this void order is also not an irrelevant consideration. In our view, in the facts of this case, the respondent was entitled to the costs of the suit. The cross objections are, Therefore, accepted.

(15) In the result we dismiss this appeal with costs and accept the cross-objections with costs.