(1979) 12 KL CK 0008

In the High Court Of Kerala

Case No : Writ Appeal.No. 152 of 1979

Union of India (UOI) and Others	APPELLANT
Vs	
F.V. Albin	RESPONDENT

Date of Decision : 10-12-1979

Acts Referred:
Customs Act, 1962 — Section 113, 114, 118, 77

Citation : (1980) 6 ELT 348

Hon'ble Judges : V.P. Gopalan Nambiyar, C.J;G. Balagangadharan Nair, J

Bench : Division Bench

Advocate : T.R. Goinda Warrier, for the Appellant; S. Faswara and E. Subramoni, for the Respondent

Final Decision : Dismissed

Judgement

V.P. Gopalan Nambiyar, C.J.—We have listened to the strenuous arguments of counsel for the appellants on behalf of the Customs Authorities and the Union of India who have filed this appeal. The question raised is the power to order confiscation u/s 113(d) of the Customs Act. That provision and Section 113(i) read thus:

A "113 Confiscation of goods attempted to be improperly exported, etc.-The following export goods shall be liable to confiscation :-

* * *

(d) any goods attempted to be exported or brought within the limits of any customs area for the purpose of being exported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force ;

* * *

(i) any dutiable or prohibited goods which do not correspond in any material particular with the entry made under this Act or in the case of Baggage with the declaration made u/s 77 in respect thereof:

* * *

A consignment of frozen shrimps for export arrived at the Cochin Wharf, in same was examined by the officials of the Inspection Agency. The authorities suspected that the shrimps were not of the exportable qualify and had deteriorated and decayed. Ext. PI notice was issued by the Collector or Customs to show cause why proceedings should not be taken for contravention of the relevant notification under the Export (Quality Control and Inspected Act 1963, and why the goods should not be confiscated u/s 113(d) and 118(b) of the Customs Act, 1962, and why penalty u/s 114 of the Act should not be imposed on the exporter. Ext. P2 reply of the exporter was rejected by Ext. P3 order of the Collector. The goods were ordered to be subject to the option of redeeming the goods by payment of Rs. 12,000/- in lieu of confiscation. A penalty of Rs. 20,009/- was imposed u/s 114, An appeal against the order to the Central Board of Excise and Customs, proved unsuccessful but the penalty was reduced from Rs. 20,000/- to Rs. 10,000/-.

2. The learned Judge quashed the impugned orders holding that the goods when they arrived at the wharf were accompanied by a valid certificate issued by the Export Promotion Agency which was the proper authority to issue the certificate under the Act. The learned Judge observed in the judgment that there was no case that the certificate was issued on any misrepresentation or fraud nor was there any case that a wrong declaration had been made by the exporter or that the exporter had knowingly brought damaged goods to the wharf.

3. The question that arises is whether in respect of the exportable goods brought to the Customs wharf accompanied by a certificate of export worthiness, the authorities have power to cancel or to amend the certificate, once it is found on inspection at the wharf or any time subsequent to its issue, that the goods were not export-worthy and that the certificate issued had proceeded on misrepresentation or fraud or misconception of facts. In answer to our question whether there was such power or not, our attention was called to Ext. Rl instruction which, it was said, gave the requisite power. It is styled a

circular Clause 2 of the circular reads as follows:

''It has now been decided to amend para 3.2 and to add two new paras 3.3 and 9.3 as under :

"3.2 In addition to the inspection at the premises mentioned in para 3.1 above, the Agency shall exercise such supervision of inspected consignments) at any place of storage, transit of at wharves before its actual shipment as it may consider necessary for satisfying the purpose of compulsory pre-shipment inspection scheme. The samples to be drawn at random for such examination shall not exceed 5% of the lot depending upon the size of the lot

3.3 If any consignment on this examination shows defects like softening of the material, off odour, deterioration etc. it shall be detained and the same shall be brought to the notice of the Customs authorities in writing. In order to further evaluate the extent of such defects the consignment shall be examined in detail in the concerned exporters premises after the segregation of good and bad material by the exporter. For such detailed examination, double the number of samples as per the table given in 5-1-1-1-2 shall be drawn from each lot.

9.3 For the purpose of inspection of consignment(s) found defective at the wharf and the issue of fresh certificate, if required for a part of the consignment subsequently, no separate inspection fee shall be levied."

Our difficulty in the case is that there is no requisite proof that the requirements of paras 3.2 and 3.3 of the executive instructions have been complied with. In this region where the export of certain goods covered by a certificate of export worthiness is sought to be penalised and the goods themselves are sought to be confiscated, we should be satisfied that the strict requirements for exercise of the power have been satisfied or complied with. We are not satisfied that there was a detailed examination of the consignment as required by Clause 3.3. of Ext. Rl ; nor was there anything to show that such detailed examination was after segregation of the goods and bad materials by the exporter as required by the clause. The Central Government Pleader contended before us that segregation was impossible and was out of question in the present case, as the whole lot was found unexportable. The premise was contested by counsel for the respondent; and in these proceedings, we would not be justified in assuming the facts in favour or the Central Government Pleader. As we are not satisfied that the exercise of the power under Ext. Rl has been strictly in accordance with its provision, on this short ground we sustain the order of the learned Judge allowing the writ petition and quashing the impugned orders.

4. The learned Government Pleader contended that the requisite power is to be found in Clause (i) of Section 113 of the Act which we have extracted earlier. There is neither averment nor proof that the requirements of this clause are satisfied and we would not be justified in assuming these facts in favour of the appellants and against the respondent.

5. We sustain the judgment of the learned Judge and dismiss the appeal with no order as to costs.

