

(1995) 11 MAD CK 0058

In the Madras High Court

Case No : Writ Petition No's. 14736 to 14741 and 14807 of 1995

Union Trading Company

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 22-11-1995

Acts Referred:

Citation : (1996) 56 ECC 92 : (1996) 82 ELT 20

Hon'ble Judges : A.R. Lakshmanan, J

Bench : Single Bench

Advocate : Mr. Habibullah Badsha, S.C. for Mr. E.S. Govindan and Mr. A.K. Jayaraj, for the Appellant; Mr. Jayachandran, A.C.G.S.C., for the Respondent

Judgement

1. By consent of both parties, the main writ petitions themselves have been taken up for final hearing, since the points involved in all the writ petitions are one and the same, they are disposed of by a common order. The petitioners in all the above writ petitions imported betel nuts of Srilankan origin. They filed necessary bill of entries for home consumption and sought clearance of the goods under freely importable category claiming "the item not covered in Negative list of Import policy 1992-97". The department refused to release the goods on the ground that betel nuts are in the nature of goods of agricultural origin and they are not dry fruits. The petitioner firm requested the Additional Commissioner of Customs for adjudication of the case after affording personal hearing. The Additional Commissioner of Customs after affording a personal hearing by his order dated 11-9-1995 hold that the betel nuts are other than dry fruits and are consumer goods requiring a valid import licence for clearance. Since the petitioner firm did not produce a licence, the Additional Commissioner of Customs confiscated the goods u/s 111(d) of the Customs Act, 1962 r/w. Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992. The Additional Commissioner of Customs was however pleased to allow clearance of the goods under import on payment of redemption find and also levied personal penalty on the petitioner firm u/s 112(a) of the Customs Act, 1962. The

Additional Commissioner has also tried to distinguish the CEGAT decision in the decision in *G. K. Enterprises v. Collector of Customs, Madras* wherein it was held that aricanuts are dry fruits and can be allowed to be imported freely. Aggrieved by the order of the Additional Commissioner of Customs, the petitioners filed appeals before the Commissioner of Customs and Central Excise (Appeals), Trichirapalli. The appellate authority by his order dated 26-9-1995 and 28-9-1995 respectively ordered clearance of the goods on licence bond. The appellate authority in paragraph 4 of his order has observed as follows :

"I have carefully gone through the records of the case. I find that in the case of *G. K. Enterprises v. Collector of Customs, Madras*, the question arose as to whether betelnuts are dry fruits or not. The CEGAT South Regional Bench, after referring to the Import and Export Policy, various dictionary meanings for the word "betel nut" and the opinion of the Commissioner of Horticulture and plantation crops, newspaper reports, like Economic Times, and the Harmonised System of Commodity Classification and Customs Tariff Act, came to the conclusion that aricanuts are dry fruits. Although the above decision was in the context of old Policy allowing import of dry fruits under Exim scrip, in the present policy, dry fruits are under O. G. L. and the entries are identical. Though a reference application has been filed, in the absence of any stay of CEGAT's decision, judicial discipline requires that the same be implemented by lower authorities. Further, the clarifications of DCFT and Ministry of Agriculture cannot also over-rule the decision of CEGAT, as held by the Supreme Court in the case of *Bengal Iron Corporation v. Commercial Tax Officer*, reported in 1993 (63) ELT 13 (SC). I also observe that in Madras Customs House, import of similar consignments is allowed under licence bond. In view of the above circumstances, I am unable to sustain the Additional Commissioner's orders that the goods are to be treated as falling under the negative list and accordingly set aside the same. However, considering the practice prevalent at the Madras Customs House, I order that the goods be allowed to be cleared on a licence bond so that if the final order of the High Court on the reference application filed against CEGAT decision is in favour of the Department, suitable action can be taken against the importers in terms of the bond. The appeals are allowed thus in the above terms."

2. According to the petitioners, they sent several letters for the release of the goods as per the order of Commissioner of Customs and Central Excise (Appeals), on execution of a licence bond. However, the goods were not released. In spite of repeated request made in person. The petitioners firm also issued lawyer's notice addressed to the Additional Commissioner of Customs and Central Excise, Tuticorin requesting the third respondent for immediate release. There has been no reply to the letters sent by the petitioner's firm and by its lawyer. Therefore, the petitioners have filed the above writ petitions for a mandamus directing the respondents to release the betel nuts imported and covered by respective bill of entries.

3. A common counter affidavit was filed on behalf of the respondents by the

Superintendent of Central Excise. It is the contention of the department that the goods imported are betel nuts and are readily useable in betel chewing/supari etc. and thus clearly and undoubtedly in the nature of consumer goods of agricultural origin. Other contentions were also raised by the respondents in the counter affidavit.

4. Mr. Habibullah Badsha, learned Senior Counsel appearing for some of the writ petitioners contended that the respondents have failed in their duty in not releasing the goods inspite of the order of the appellate authority and therefore, it will tantamount to violation of the petitioners' fundamental right under Articles 14 and 19(1)(g) of the Constitution of India and that the silence and inaction on the part of the Additional Commissioner of Customs in not releasing the goods on a licence bond is mala fide in law and arbitrary and causing great loss to the petitioners. He also contended that the clarification issued by the Central Government and the State Government shows their understanding of the statutory provisions and they are not binding upon the Court and that the understanding of the Government, whether in favour of the assessee or against the assessee is no more than understanding an opinion. Therefore, any clarification and clearance issued by the department will not bind the quasi-judicial functioning of the authorities under the Act. While acting in quasi-judicial capacity they are bound by law and not by any administrative instructions, opinion, clarification or circulars.

5. Mr. A. K. Jayaraj, learned Counsel appearing for the petitioner in some of the writ petitions, after adopting the arguments of learned Senior Counsel, has contended that the rights of the petitioners cannot be taken away by virtue of some clarification and that any clarification cannot take away the rights accrued to an importer or exporter under the express provisions of the policy. He also cited a decision of the Supreme Court in Bengal Iron Corporation and another Vs. Commercial Tax Officer and others, wherein the Supreme Court has held as follows :

"So far as clarifications/circulars issued by the Central Government/State Government are concerned they represent merely their understanding on the statutory provisions and they are not binding upon the Court. While acting in a quasi-judicial capacity they are bound by law and not by any administrative instructions or notes or clarifications or by circulars."

According to the learned counsel, the authorities whenever issued a policy decision, they issue a public notice. But, in the present case, no public notice regarding the importation was not in force at the time when the goods landed in the port. According to him, the Customs authorities cannot be allowed to (sic) adopt different standards and take different (sic) at different times with regard to the import of the very same commodity. It is the duty of the authorities to inform the general public who are importing the goods and make it clear as to what type of goods should be allowed. Mr. Jayaraj, learned counsel also cited a decision of the Calcutta High Court, wherein the said Court held that the quasi-judicial

authorities are bound by the decision of the Supreme Court, High Court and Tribunals as reported in Ghanshyam Chejra Vs. Collector of Customs, .

6. Mr. Jayachandran, learned A. C. G. S. C. in reply to the arguments of learned counsel for the petitioners submitted the following points :

"(a) The goods imported are betel nuts and readily usable in betel chewing/ supari etc. and thus are clearly and undoubtedly in the nature of consumer goods of agricultural origin.

(b) Hence they fall under entry Sl. No. 156 of Part III - Restricted items of Import under the current Export-Import Policy 1992-97.

(c) Therefore, the goods can be imported only under a specific licence. Otherwise, the goods are liable for confiscation. Since in this case, there was no licence produced by the importers, the 3rd respondent while adjudicating the matter, confiscated the goods with an option to redeem the goods on payment of fine.

(d) Betel nut or arecanut is only a nut and not dried fruit. For this, the 3rd respondent considered the dictionary meaning of betel nut, arecanut, nut and dry fruit and also referred Encyclopedia of Science and Technology by McGraw Hill.

(e) There was only one view by the Department from the beginning that Betel nut is not dry fruit and only when two views are possible, the interpretation favourable to the importer is to be taken into account."

7. According to learned counsel for respondents the export import policy applicable to the case on hand is the policy of the year 1992-97 and the goods which were imported through Tuticorin port were declared as betel nut falling under Chapter Heading No. 8 with sub-heading No. 0802.90. It is appropriate at this stage to refer to Chapter 8 which deals with edible fruit and nuts; peel of citrus, fruits or melons. Sub-heading 08.02 deals with the following :

"Other nuts, fresh or dried, whether or not shelled or peeled : The Export-Import Policy for 1992-97, Part II Sl. No. 156 deals about Restricted items. These restricted items are consumer goods, which are not permitted to be imported freely except against a licence.

Sl. No. 156-Restricted Items. A consumer goods, Sl. No. 1 is reproduced below :

Sl. No.	Description of items	Nature of Restriction
1.	All consumer goods, how-so-ever Not permitted to be described, of industrial, imported except against agricultural, mineral or animal a licence or in accordance origin whether in SKD/CKD with a public notice issued condition or ready to assemble in this behalf. sets or in finished form.	

According to the learned counsel for respondents, the betel nuts are in the nature of consumer goods of agricultural origin and that being the clear picture emanating from the policy itself, there cannot be any deviation. The entry in the present policy is clear and unambiguous and therefore, the petitioners are not now entitled to the release of the goods. Learned counsel further submitted that in interpreting a particular entry, the opinion given by the regulating authority and the authority who is the expert to give such opinion, i.e., the Ministry of Agriculture, is taken as guidelines alongwith the meaning given for such entry in Modern English dictionaries and the Encyclopedias to adjudicate the matter correctly. According to him, the third respondent has considered extensively the meaning and definitions of "betel nut" "dried fruits" citing the paras from dictionaries and McGraw-Hill Encyclopedia. Therefore, in the context of the Export-Import Policy 1992-97 the reasoning of the third respondent is valid and the Appellate Authority without considering the present policy allowed the appeals. It is also further stated that the department has filed appeals against the orders of the appellate authority and the limitation of three months to file appeal has not yet expired and that the department definitely feels that the earlier decision of CEGAT is not applicable to the import made under the present policy. It is also stated that the importers are one time importers and if the items are ordered to be released, it will be very difficult to take suitable action against the importers in the event of the department getting an order from the appellate authority in favour of the department. Hence, in the interest of justice and to safeguard the interest to department, the petitioners may be directed to deposit the redemption fine and penalty amounts. The petitioners must also be directed to pay interest at the rate of 15% per annum on the customs duty payable.

8. I am unable to countenance anyone of the contentions of the learned counsel for respondents. The appellate authority by his order dated 26-9-1995 on a careful analysis and consideration of the entire materials placed before him has arrived at a conclusion that arecanuts are dry fruits. He followed the earlier decision of the CEGAT, Sough Regional Bench in the case of M/s. G. K. Enterprises v. Collector of Customs, Madras - 1994 (52) ECR 13 (Tri). In that case, the question arose as to whether betel nuts are dry fruits or not. The Southern Region Bench of the CEGAT, after referring to the import and export policy and also various dictionary meaning of the word "betel nut" and the opinion of the Commissioner of Horticulture and Plantation crops and the Harmonised System of Commodity classification and Customs Tariff Act, came to the conclusion that arecanuts are dry fruits. It is also pointed out that although the above decision was in the context of old policy allowing import of dry fruits under Exim scrip, in the present policy, dry fruits are under O. G. L. and the entries are identical. He has also directed the authorities to follow the orders passed by the CEGAT of the Southern Regional Bench. The appellate authority has allowed the goods to be cleared on a licence bond so that if final order of the High Court on the reference application filed against CEGAT decision is in favour of the department, suitable action can be taken against the importers in terms of

the bond. As a matter of fact, the appellate authority has also observed that similar consignment were allowed under licence bond. In view of the said circumstances, he was unable to sustain the Additional Commissioner's order that the goods are to be treated falling under the negative list and accordingly, he set aside the same. In my opinion, the respondents have failed to follow the dictum which is in force and which was rendered by the CEGAT of the Southern Region. A duty is cast on the Additional Commissioner of Customs, Tuticorin to release the goods on a licence bond as per the order of the appellate authority. Refusal to release the goods, as already seen, tantamounts to violation of the petitioners' fundamental right. Silence and inaction on the part of the Additional Commissioner of Customs in not releasing the goods on the licence bond is arbitrary and undoubtedly great loss to the petitioners. When an order is passed by the appellate authority, the Additional Commissioner of Customs, who is a lower authority than the appellate authority cannot refuse to release the goods as per the directions of the appellate authority. This only shows how the departmental authorities are making the alternative remedies ineffective, for they know that they cannot disobey the orders of the appellate authority to fear of punishment. This is a clear example of the department's disregard of the orders of the statutory authorities. As pointed out by learned Senior Counsel the petitioners have no other effective alternative remedy except to approach this Court by invoking the jurisdiction under Article 226 of the Constitution of India. The goods landed during the second week of July, 1995 are even now lying within the customs frontier. If the goods are allowed to remain there, the goods will definitely deteriorate further in value. This apart, demurrage and container charges have to be paid by the petitioners for no fault of theirs. The petitioners have stated that they have suffered huge loss by way of deterioration.

9. In my opinion, the Additional Commissioner of Customs is not right in withholding the goods when they were directed to be released on licence bond. The inaction on the part of the third respondent in not releasing the goods and not even replying to the letters and notices sent by the Counsel are to say, the least improper. I have also gone through the order passed by the Customs, Excise and Gold Control Appellate Tribunal which was in turn followed by the appellate authority. In the decision in *Union of India and others Vs. Kamlakshi Finance Corporation Ltd.*, which was referred to in the present case, the Supreme Court has directed the department to pay utmost regard to judicial discipline and give effect to orders of higher appellate authorities which are binding on them. The Supreme Court has observed in the said judgment as follows :

"The principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The mere fact that the order of the appellate authority is not "acceptable" to the department - in itself an objectionable phrase - and is the subject-matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent Court. If this healthy rule is not followed, the result will only be undue harassment to assesseees and chaos in administration of tax

laws."

10. The arguments advanced by Mr. Jayachandran, learned counsel for respondents on the above lines cannot at all be accepted in view of the verdict of the Supreme Court. The mere fact that the order of the appellate authority is not acceptable to the department and is also subject matter of an appeal to be filed hereafter can furnish no ground for not following it unless its operation has been suspended by a competent court. As already pointed out, the appellate authority while ordering release of the goods has safeguarded the interest of the department as well. The further request of the learned counsel for the respondents that the petitioners may be directed to deposit the redemption fine and penalty amount cannot at all be countenanced. As already pointed out, the appellate authority has set aside the order of the Additional Commissioner imposing redemption fine and penalty. In the event of their success in the reference or in the appeal to be filed by the department, the department can always have recourse to the Court of Law for redressal of their grievance.

11. Learned counsel for respondent also cited a decision in 1986 (6) ECR 644 rendered by the CEGAT, West Regional Bench, Bombay wherein the Tribunal has observed as follows :

"Import - Dry fruits excluding cashew nuts and dates allowed to be imported only against licence issued to dealer in trade and not under OGL - Import Policies AM 1983-84, AM 1984-85 and AM 1985-88. In all the three policies 1983-1984, 1984-85 and 1985-88, the import of dry fruits excluding cashew nuts and dates is allowed against licences issued to dealers engaged in that trade. The contention of the appellants that the Import Policy for the year 1983-84, or 1984-85 or years 1985-88 permitted import of dry fruits by a trade under OGL therefore, appears incorrect."

I am unable to accept the view taken by the Bombay Tribunal with respect and prefer to accept the view taken by the *G. K. Enterprises v. Collector of Customs, Madras* rendered by the South Regional Bench which is a very relevant one. Mr. Jayachandran, learned ACGSC cited a Division Bench Judgment of our High Court in *Collector of Customs, Madras Vs. Madras Electro Castings P. Ltd.*, wherein the Bench observed that the jurisdiction under Article 226 of the Constitution of India cannot be exercised only for the purpose of granting 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 infrastructure the very order of confiscation. In this context, I would like to point out that as already seen, the relief asked for in these writ petitions is for release of the goods by the customs authorities pursuant to an order passed by the appellate authority which has directed the Additional Commissioner of Customs, Tuticorin to release the goods. The appellate authority has followed the decision of South Regional Bench of CEGAT and ordered release of the goods on certain conditions.

12. Even though, the parties have argued to some extent on merits, I feel that

such adjudication of the question on merits is not warranted at this stage and it is left open to be decided to by the authorities concerned in the appeal to be filed by the department hereafter. The discussion above referred to in the earlier part of my order only relates to the release of the goods on the facts and circumstances and on a prima facie consideration of the case. Since, the appellate authority has followed the judgment of the CEGAT of the South Regional Bench, there cannot be any second opinion on the question that the lower authority of this region are bound by the decision of their superior authorities and that they are bound to follow such decision. Therefore, all the writ petitions are allowed and the third respondent is directed to release the goods forthwith imported by the respective petitioners for home consumption. The release will be subject to the conditions imposed by the appellate authority in its order dated 26-9-1996 and 28-9-1995 respectively. The Plant Quarantine authority is directed to consider, examine and certify that the goods imported is fit for home consumption and issue the certificate forthwith if the goods are found to be fit for home consumption. No costs.