

(1986) 04 CAL CK 0050

In the Calcutta High Court

Case No : Matters No's. 357, 358 and 359 of 1983

Webta Private Limited and Others

APPELLANT

Vs

Collector of Customs and Others

RESPONDENT

Date of Decision : 22-04-1986

Acts Referred:

Customs Act, 1962 — Section 24, 25, 25(1)

Citation : (1986) 10 ECC 208 : (1986) 9 ECR 66 : (1986) 25 ELT 670

Hon'ble Judges : Sudhir Ranjan Roy, J

Bench : Single Bench

Advocate : Roy, for the Appellant;

Judgement

Sudhir Ranjan Roy, J.—These three writ applications which are taken up for analogous disposal, arise out of claims for customs duty on goods exported by the petitioners to different foreign countries, said to be finished leather, which, according to the petitioners are exportable free of duty in view of a notification dated August 2, 1976 issued by the Central Government u/s 25 of the Customs Act, 1962.

2. Since in the said notification "finished leather" was not explained, the Customs authorities were relying upon the different norms set out in that regard by the Central Leather Research Institute (hereinafter to be referred to as the "C.L.R.I.") in 1973. According to the petitioners, the said norms set out by the C.L.R.I. having no legal foundation, could not be relied upon as such, but the Customs Authorities on the basis of the opinion expressed by the C.L.R.I. held that the subject goods exported by the petitioners were not "finished leather" within the meaning of the exemption notification and levied customs duties on the goods.

3. The petitioners after having moved the departmental adjudicating authorities abortively for redress, invoked the writ jurisdiction of this Court and obtained the instant, Rules. In the meantime, the subject consignments, as it appears, were

released for exportation on the petitioners" executing bonds in favour of the Customs authorities.

4. All the three matters were contested by the respondents the Customs authorities, by filing separate affidavits in opposition. According to the respondents, the goods having been declared by the petitioners as "finished leather", the consignments were classified free of duty on the basis of the said declaration. As per normal practice the consignments of leather were, however, examined by the Leather Trained Appraisers of the customs House. On such examination, the goods were found to be not in agreement with the declarations made by the exporters and, therefore, samples of the goods were forwarded to the C.L.R.I. for certification. However, since the exporters insisted for immediate shipment of the goods, they were allowed to execute bonds undertaking to abide by the terms of the bond in the event of adverse report from the C.L.R.I. The C.L.R.I. reported that the samples did not satisfy the norms and conditions of finished leather as laid down in C.L.R.I. Workshop, 1973. The goods, as such, not being finished leather as claimed by the exporters, duty at the rate of 25% was chargeable on the same.

5. The bonds executed by the exporters were enforced and adjudication proceedings were drawn up against them. The, exporters went through the departmental Appellate authority, but to no effect. According to the respondents, a writ court has no jurisdiction to interfere with the matter since the actions of the departmental authorities are strictly in accordance with law and can under no circumstances be said to be perverse.

6. In order to appreciate the rival contentions of the parties, it may be useful to set down here the relevant exemption notification issued by the Central Government u/s 24 of the Customs Act, 1962.

"Compendium of Customs notification as on 2nd August, 1976. Notification No. 333/Cus/76.

In exercise of the powers conferred by Sub-section (1) of Section 25 of the Customs Act, 1962 (52 of 62), the Central Government being satisfied that it is necessary in the public interest so to do, hereby makes "finished leather" of Goat, Sheep and bovine animals and their young ones falling under Heading No. 14 of the Second Schedule to the Customs Tariff Act, 1975 (51 of 75), when exported out of India, from, the whole of the duty of customs leviable thereon under the said Second Schedule".

7. In the said notification, no attempt was made to explain what was actually meant by "finished leather". Subsequently, by another notification dated October 1, 1977 this was clarified. The relevant notification is set out below :-

G.S.R. 628(E)

"In exercise of the powers conferred by Sub-section (1) of Section 25 of the Customs Act, 1962 (52 of 62), the Central Government being satisfied that it is

necessary in the public interest so to do hereby makes the following further amendment in the notification of the Government of India in the Department of Revenue and Banking No. 333-Customs, dated 2nd August, 1976, namely:-

Explanation : In this Notification the "finished leather" of Goat, Sheep and bovine animals and their young ones means the leather which satisfy the standard specimen specified for such a leather by the Indian Standards Institution in I.S.I. 8170-1977, for the time being in force."

8. It is, however, not disputed that the subject consignments in all the three cases were exported prior to the 2nd notification dated October 1, 1977 under which "finished leather" meant the leather which satisfied with the standard specified for such finished leather by the Indian Standards Institution.

9. Now, whatever the petitioners might have stated in their writ petition, it is not disputed that before the customs authorities declarations were made to the effect that at the time of exportation of the goods the said goods conformed to the C.L.R.I. norms. As a matter of fact, in Matter Nos. 357 of 1983 (Pioneer Tanners & Glue Works v. Assistant Collector of Customs and 359 of 1983 [Webta (P) Ltd. v. Assistant Collector of Customs], it has been clearly admitted that at the material time the C.L.R.I. norms were being followed by the Traders.

10. In matter no. 357 of 1983, the petitioners in reply to the show cause notice informed the Customs authorities that they had fulfilled all the operations as laid down in the C.L.R.I. norms of 1973 and what they had exported was finished leather as declared in the relevant Shipping Bill (vide page 48 of the writ petition). It was also stated that since they had fulfilled all the operations of the C.L.R.I. norms they could not be said to have contravened any provisions of the Customs Act.

11. Similarly in Matter No. 359 of 1983, the petitioners in reply to the show-cause notices stated as follows :-

"We declared at the time of shipment that we had undertaken the process listed at serial Nos. 1 to 6 and Plating of serial No. 9 of the workshop laid down by the C.L.R.I, on 9.11.73. In support of our contention we will be submitting a test report from the Principal, College of Leather Technology, Calcutta of "that duplicate sample of the same consignment. It is needless to state that the said Regional authority will also confirm the exported goods as "finished leather" in the terms of the norms specified by the C.L.R.I." (vide Annexure "C" at page 43 of the writ petition).

12. Accordingly, there is no denying the fact that for determination whether the leather sought to be exported was finished leather or not, reliance was placed on the C.L.R.I. norms which were in force till before October 1, 1977 when the I.S.I. Standards were introduced.

13. It is true that no such admission has been made by the petitioners in Matter no. 358 of 1983 (East India Goat Skin Company v. Assistant Collector of

Customs), but in view of the admissions made in the two other matters taken along with the case made out by the Customs authorities in their affidavits-in-opposition, it is more than clear that prior to the notification dated October 1, 1977 the C.L.R.I. norms were being consistently followed by the Traders as well as by the Customs authorities for identification of "finished leather" within the meaning of the relevant exemption notification.

14. Indisputably, in all the three cases, samples from the subject consignments were sent to the C.L.R.I. at Madras for examination and report and in all the three cases the opinion of the C.L.R.I. was that they were not "finished leather" since the "plating operation" had not been completed. It, however, appears that while expressing their opinion that the sample leather did not satisfy the norms and conditions for finished leather laid down by the Workshop, the Director of the C.L.R.I. clarified the opinion by stating that "It may please be noted that the above opinion is technical and academic and not intended for publicity/advertisement/legal purposes".

15. This clarifying note, in my view, is practically of no consequence in view of the positive opinion expressed by the Director of the C.L.R.I. that the sample leathers did not satisfy the norms and conditions for finished leather as laid down by the C.L.R.I. Workshop. It is likely that since the C.L.R.I. is basically a Research Institute, it wanted to keep itself aloof from any possible controversy and with the said object in view the said clarifying notes were added.

16. It, however, appears that subsequently the Director of the C.L.R.I. wrote to the petitioners or at least to some of them that "leather even though plated particularly without a finished coat may suffer a loss in gloss due to constant handling involved in transport, packing etc." In that connection it was stated that the Customs authorities in Calcutta who had inspected the subject consignments on an "as is where is basis" in the best position to verify whether the leathers had been plated or not.". And as already seen, the Customs authorities were not satisfied about the leathers being "finished leather". It may be mentioned here that the petitioners got a sample of the leathers inspected by a representative of the College of Leather Technology, Calcutta who pronounced the same as satisfying the plating norms also. But these reports having been obtained at the instance of the petitioners who obviously were interested in obtaining reports favourable to them, reliance cannot be placed upon the said reports in preference to the reports of the C.L.R.I. As a matter of fact, relevant norms having been set out by the C.L.R.I. the Director of the C.L.R.I. was more competent to opine whether the relevant samples went for examination, were actually "finished leather" or not.

17. It is, as such, clear that the C.L.R.I. was definitely of the view that the subject consignments were not finished leather within the meaning of the relevant exemption notification.

18. The adjudicating authorities of the Customs Department in recording a

finding that the subject consignments were not finished leather and, as such, were leviable to duty, relied solely upon the opinion expressed by the C.L.R.I. since according to the Customs authorities, it was safer to do so, the matter being highly technical.

19. I do not think that in doing so the adjudicating authorities of the Customs Department acted in a perverse manner. According to the well-settled principles of law as enunciated by the Supreme Court, the view taken by the Customs authorities in this regard cannot be said to be perverse, even if another view favourable to the petitioners is possible. As a matter of fact, the Customs authorities in my judgment, could also have taken a view favourable to the petitioners, but since the view taken by them cannot under any circumstances be said to be perverse, being based on the opinion of an expert Government body like the C.L.R.I. this court exercising writ jurisdiction will be reluctant to interfere with the said finding.

20. Mr. Roy, the learned Counsel representing the petitioners, however, contended that since the amended notification dated October 1, 1977 came into force during the pendency of the adjudication proceedings, the Customs authorities should have acted upon the same and relieved the petitioners from payment of Customs duty in terms of the relevant exemption notification, since the subject consignments indisputably conform to the I.S.I. standard.

21. In this connection, reliance was placed upon some decisions including the decision of the Supreme Court in Lakshmi Narayan Guin and Others Vs. Niranjan Modak, . That was a case where during the pendency of the appeal a notification came into force extending the operation of the West Bengal Premises Tenancy Act, 1956 to Memary within the District of Burdwan and it was held by the Supreme Court that since the suit was pending in appeal, the benefit of the relevant notification was available to the tenant.

22. It is, however, not known whether the said notification was given a retrospective effect by the Legislature or not, but it seems that there must have been some indication in the notification which made it applicable to pending proceedings. As a matter of fact, the Supreme Court while coming to its conclusion, relied upon the earlier decision of the Court in Smt. Dayawati and Another Vs. Inderjit and Others, , where the Court observed that "if the new law speaks in a language which expressly or by clear intendment takes in even pending matters (emphasis supplied) the court of trial as well as the court of appeal must have regard to an intention so expressed and the court of appeal may give effect to such a law even after, the judgment of the court of first instance".

23. As a matter of fact, the law on the point seems to be well-settled and it is as hereunder:-

"In general, when the substantive law is altered during the pendency of an action, rights of the parties are decided according to law as it existed when the

action was begun unless the new statute shows a clear intention to vary such rights.

But if the necessary intendment of a statute is to affect the rights of parties to pending actions, the court must give effect to the intention of the legislature and apply the law as it stands at the time of the judgment even though there is no express reference to pending actions."

24. The effect of a change in the law between a decision at first instance and the hearing of an appeal from that decision, was discussed by the House of Lords in *Attorney General v. Vernazza*. Lord Denning said (at page 978) that it was "clear that in the ordinary way the court of Appeal cannot take into account a statute which has been passed in the interval since the case was decided at first instance, because the rights of litigants are generally to be determined according to the law in force at the date of the earlier proceedings. But it is different when the statute is retrospective either because it contains clear words to the effect or because it deals with matter of procedure only ..." (Maxwell - on The Interpretation of Statutes; 12th Edition, pages 220, 221 and 222).

25. In the instant case too, there is nothing to show that the second notification dated October 1, 1977 was given a retrospective effect. Such intendment is also not clear from the language of the notification. And that being so, I do not think that the Customs authorities acted in contravention of law in not applying the provisions of the second notification to the subject consignments.

26. In the view of the matter, the subject consignments not being "finished leather" within the meaning of the relevant exemption notification of the year 1976, the Customs authorities were justified in taking the view that the subject consignments were liable to duty. The petitioners were duly served with show cause notices and they were given opportunities to give their replies and the matters were duly heard by the Customs authorities in presence of the petitioners. As a matter of fact, it is not the case of the petitioners that rules of natural justice were in any way contravened. Regarding the view taken by the adjudicating authorities of the Customs Department, I have already made my observations earlier and in my judgment the view so taken by the Customs authorities cannot be said to be perverse demanding thereby interference by this court exercising writ jurisdiction.

27. The writ applications be accordingly, dismissed on contest. The Rules issued be discharged and interim orders, if any, do stand vacated. The Customs authorities are permitted to realise their legitimate dues from the petitioners in accordance with law unless voluntary payments are made within a period of forty-five days from this date.

28. There will be no order as to costs.

29. This judgment will govern all the three writ applications hereby disposed of analogously.