

SUPREME COURT OF INDIA

Hind Trading Co.

Vs.

Union of India

C.A.No.1332 of 1966

(S. M. Sikri, R. S. Bachawat and K. S. Hegde, JJ.)

28.10.1968

JUDGEMENT

BACHAWAT, J.:-

1. The appellant M/s. Hind Trading Company, imported 1,65,000 pieces of Chinese silver dollars from Yatung in Tibet to Kalimpong, via Nathula Pass and Hungpo through Sikkim State under two Reserve Bank import licences, dated April 22, 1957. As there were two Reserve Bank licences, the dollars were divided into two lots at Yatung. Each lot consisted of 66 bags containing 82,500 dollars. One lot of bags bore the mark "H.D." and Serial Nos. 1 to 66, and the other lot bore the mark "H. N." and Serial Nos. 1 to 66. On May 15, 1957, the appellant made two applications bearing Nos. 32 and 34 to the officer-in-charge. Land Customs Station, Kalimpong, for the grant of permits for passing the goods across the frontier. Application No. 32 related to the bags marked "H. N." Application No 34 related to the bags marked "H.D.". On May 16, the two consignments arrived at the land Customs Station, Kalimpong and were examined and appraised by the Land Customs Officer-in-charge of the station On the duty being paid, the officer endorsed the two applications, certifying that the duty was paid and permitting the import of the goods. The consignments loaded in trucks then passed out of the Customs House and on the way to Silguri were checked at the Teesta Bazar check-post at 8-45 p.m. on May 16. On the night of May 16, they reached Siliguri and

were delivered to M/s. Amalgamated Transport Co., for carriage by air to Dum Dum. On the morning of May 17, one consignment of 22,500 dollars packed in 66 bags together with the import appln. No. 34 was sent by plane from the Sonapur airstrip to Dum Dum Airport and on the same date the consignment reached Dum Dum and was delivered to the appellant at Calcutta. On May 18, 1957, the Range Officer, Matidhar, seized the second consignment to 82,500 dollars packed in 66 bags bearing the mark "H.D." together with the application No. 32, when they were about to be despatched by air from the Sonapur airstrip. The seizure was made under s. 5 (3) of the Land Customs Act on the ground that the mark on the bags was "H.D." whereas the accompanying import appln. No. 32 related to "H.N." bags.

2. On July 7, 1957, the Collector of Land Customs, Calcutta, issued a notice to the appellant to show cause why the dollars seized on May 18, 1957, should not be confiscated and why a penalty should not be imposed upon the appellant under Sections 5 (3) and 7(1) of the Land Customs Act, 1924, and Section 167 (8) read with Section 19 of the Sea Customs Act, 1878 as made applicable by S. 23-A of the Foreign Exchange Regulation Act, 1947, as there was reason to believe that the goods had been imported by the appellant by land from Tibet into India on lay 16, 1957 through Indo-Tibet border, (i) without a valid permit under Section 5 of the Land Customs Act, and (ii) without valid permission granted by the Reserve Bank of India under notification No. F. 3 (84) E. F. VII/56 dated May 4, 1956 issued under Section 8 (1) of the Foreign Exchange Regulation Act. That notification prohibited the import into India of silver coins current in the Tibet region of China without the permission of the Reserve Bank of India. On July 30, 1957, the appellant showed cause against the proposed action by a letter stating that the first consignment of 82,500 dollars was packed in bags marked "H.N.", that by inadvertence the carriers M/s. Amalgamated Transport Co., had sent import application No. 34 with the first consignment and had kept application No. 32 with the bags marked "H.D.", that the two consignments were covered by valid Reserve Bank licences and import passes, that the seizure of the dollars kept in "H.D." bags under Section 5 (3) of the Land Customs Act was not justified and that there was no ground for confiscating the goods or imposing any penalty. The appellant was heard by the Collector on August 26, and December 11, 1957. On January 10, 1958, the Collector passed an order adjudging that offences under Section 5 (3) and 7 (1) of the Land Customs Act and Section 167 (8) of the Sea Customs Act, 1878 had been committed and directing confiscation of the goods under those sections read with Section 23-A of the Foreign Exchange Regulation Act. The Collector held that (i) the goods were liable to confiscation under Section 5 (3) of the Land Customs Act as they were not covered by the accompanying import application No. 32; (ii) the appellant failed to prove that the first consignment of 66 bags bore the mark "H.N." or that by inadvertence of the carriers, application No. 34 had been sent with it, and (iii) had the first consignment of 66 bags bore the mark "H.N.", the Range Officer Matidhar and the officers at Dum Dum would have detected and noted the fact and the appellant could have produced before the Customs officials at Calcutta bags with the mark "H.N." immediately after May 18, 1957. An appeal against this order was dismissed by the Member, Central Board of Revenue, on May 17, 1958. A revision petition against the last order was dismissed by the Secretary to the Government of India, Ministry of Finance, Department of Revenue, on January 16, 1961.

3. On November 16, 1962, the appellant filed a writ petition in the Punjab High Court for quashing the aforesaid decisions and for setting aside the order of confiscation of the silver dollars. On May 14, 1964, Shamsheer Bahadur J. dismissed the petition. He held that there was no error of law

apparent on the face of the record. The appellant filed a Letters Patent appeal against the order. On August 25, 1964, the Divisional Bench dismissed the appeal. It held that (1) Section 5 (3) of the Land Customs Act, 1924, applied to the case; (2) the fact that the 66 bags bore the mark "H.D." and the accompanying application No. 32 related to "H.N." bags showed conclusively that the dollars contained in those bags were imported without proper licence and import permit and without payment of duty and (3) the finding of fact that there was no mistake on the part of the carriers with regard to the despatch of the consignments and accompanying documents could not be set aside in a writ application. The present appeal has been filed by the appellant after obtaining a certificate from the High Court.

4. Mr. B. Sen for the appellant contended that the seizure and confiscation of the goods was not authorized by Section 5 (3) of the Land Customs Act, 1924, (2) the finding that the appellant had committed offences under that section and other provisions of law was perverse and liable to be quashed; and (3) the impugned orders were passed in contravention of the principles of natural justice. These contentions were disputed by Mr. R. M. Mehta.

5. The Land Customs Act, 1924, provided for the levy of duties of customs on articles imported or exported by land from or to territory outside India. The Act extended to the whole of India, (Section 1). Section 2 was the definition section. Section 3 authorized the appointment of Land Customs Collectors and officers. The Range Officer, Matidhar, was a Land Customs Officer working under the Collector of Land Customs, Calcutta having jurisdiction over Singapore where the dollars were seized. Section 4 authorized the establishment of Land Customs stations and the determination of routes by which alone goods imported or exported by land could pass. The Central Board of Revenue established Kalimpong as the Land Customs station and prescribed the following routes by which alone dutiable good could pass out of Tibet into India: (a) road leading from Yatung (in Tibet) to Kalimpong via Jolapala Pass and Pedong through Sikkim State, (b) road leading from Yatung (in Tibet) to Kalimpoog via Nathula Pass and Rangpo through the Sikkim State. Section 5 provided for permits of goods passing across frontier. Section 6 dealt with personal baggage. Section 7 prescribed penalties. Section 8 prescribed certain dates and times when the goods were not to be passed. Section 9 made applicable for the purposes of levy of land customs under the Act certain provisions of the Sea Customs Act, 1878 including Section 157 (8) with the necessary modifications and adaptations. Sections 18, 19 and 19-A of the Sea Customs Act, 1878 and the whole of the Foreign Exchange Regulation Act, though not expressly incorporated in the Land Customs Act, applied of their own force to goods imported or exported by land. Duty on imports and exports by land was imposed by S. 5 of the Indian Tariff Act, 1934. The Land Customs Act, 1924, had not been repealed by the Customs Act, 1962.

6. It is necessary to read Sections 4, 5 and 7 (1) of the Land Customs Act, 1924:-

"Section 4. Establishment of Land Customs Stations and determination of routes.- The Chief Customs Authority may, by notification in the official Gazette.

(a) establish land customs stations for the levy of land customs in any land customs area, and

(b) prescribe the routes by which alone goods, or any class of goods specified in the notification may pass by land out of or into any foreign territory, or to or from any land customs station from or to any foreign frontier.

Section 5, Permit for goods passing across frontier.- (1) Every person desiring to pass any goods, whether dutiable goods or not, by land out of or into any foreign territory shall apply in writing, in such form as the Chief Customs Authority may by notification in the Official Gazette prescribe, for a permit for the passage there of, to the Land Customs Officer in charge of a Land Customs Station established in Land Customs s area adjoining the foreign frontier across which the goods are to pass.

(2) When the duty on such goods has been paid or the goods have been found by the Land Customs Officer to be free of duty, the Land Customs Officer shall grant a permit certifying that duty has been paid on such goods or that the goods are free of duty, as the case may be;

(3) Any Land Customs Officer, duly empowered by the Chief Customs Authority in this behalf, may require any person in charge of any goods which such officer has reason to believe to have been imported or to be about to be imported, by land from, or to any foreign territory to produce the permit granted for such goods; and any such goods which are dutiable and which are unaccompanied by a permit or do not correspond with the specification contained in the permit produced, shall be detained and shall be liable to confiscation.

Provided that nothing in this subsection shall apply to any imported goods passing from a foreign frontier to a Land Customs Station by a route prescribed in that behalf.

(4) The Chief Customs Authority may, by notification in the Official Gazette, direct that the provisions of this section, or any specified provisions thereof, shall not, in any land customs areas specified in the notification, apply in respect of goods of any class or value so specified.

Section 7. Penalties.- (1) Any person who-

(a) in any case in which the permit referred to in Section 5 is required, passes or attempts to pass

any goods by land out of or into any foreign territory through any land customs station without such permit, or

(b) conveys or attempts to convey to or from any foreign territory or to or from any Land Customs Station any goods by a route other than the route, if any, prescribed for such passage under this Act, or

(c) aids in so passing or conveying any goods, or knowing that any goods have been so passed or conveyed, keeps or conceals such goods or permits or procures them to be kept or concealed,

shall be liable to penalty not exceeding, where the goods are not dutiable, fifty or, where the goods or any of them are dutiable, one thousand rupees, any dutiable goods in respect of which the offence has been committed shall be liable to confiscation."

7. The scheme of Sections 4, 5 and 7 (1) of the Land Customs Act with regard to imports by land was as follows: Goods could pass by land out of foreign territory or from a foreign frontier to a land customs station by a prescribed route only (Section 4 (b)).To import goods by an unauthorized route or an attempt to do so was an offence (Section 7 (1) (b)). No permit could be obtained for importing goods by an unauthorized route. The goods could be brought by the prescribed route from the foreign frontier to the land customs station, without a permit (proviso to Section 5 (3)). Subject to exemptions, if any, under Section 5 (4), a permit was required for the passage of goods through the Land Customs Station. Passing of goods through the Land Customs Station without a permit or an attempt to as pass the goods was an offence, (Section 7 (1) (a)). The importer was required to apply for the permit to the officer-in-charge of the land customs station (Section 5 (1)). The goods were brought to the station for examination and appraisalment of duty. On the duty being paid or on its being found that the goods were free of duty, the officer issued the permit allowing the passage of the goods and certifying that the duty had been paid or the goods were free of duty, as the case might by (Section 5(1) and (2)).Dutiable goods in respect of which an offence was committed was liable to confiscation. What is stated above applied mutatis mutandis to exports by land.

8. In this setting let us examine the provisions of Section 5 (3). That sub-section required that all goods imported or about to be exported must be accompanied by a permit for the passage thereof issued by the officer in charge of a land customs station. It was an offence to take the goods through the land customs station without a permit. A duly authorised land customs officer could enforce this requirement by asking any person in charge of the goods to produce the permit. Dutiable goods unaccompanied by a permit or not corresponding to the specifications contained in the permit produced had to be detained and was liable to confiscation. It is to be noticed that the sub-section referred to goods "unaccompanied by a permit" and to "any person in charge of any goods". It obviously contemplated cases where the goods should be accompanied by the permit and the person in charge of the goods was under a duty to produce the permit. In view of Sections 5 and 7 (1) it was necessary that the goods should be accompanied by a permit when they passed through the land customs station. Rules under the Act could also prescribe that the goods must be accompanied by a

permit for some time even after such passage. In such cases, Section 5(3) was infringed if the goods were not accompanied by the permit.

9. The Central Board of Revenue framed the Chinese Silver Dollars (Import) Rules on March 29, 1958 in exercise of the powers conferred by Section 9 (1) of the Land Customs Act, 1924. Rule 6(2) provided that on its journey from Kalimpong land customs station to its ultimate destination any consignment of Chinese silver dollars imported from Tibet into India must be accompanied by a permit, i.e., the importer's copy of the relative import application bearing the endorsement of the officer in charge of the Kalimpong land customs station permitting the clearance of the consignment. The permit must be produced at the land customs check-post at Teesta Bazar, along with the consignment if the destination was Teesta Bazar or beyond. It must also be produced on demand by any land customs officer at any time during the journey of the consignment up to its ultimate destination. These rules were framed on the assumption that independently of the Rules, the importer was not obliged to keep the permit with the dollars after they passed out of the Kalimpong land customs station. The rules were not in force on May 18, 1957 when the dollars were seized by the Range Officer Matidhar. There was no provision in the Act or the Rules in force on May 18, 1957 which required the appellant to keep the permit at Sonapur airstrip with the dollars seized on that date.

10. The contention of the Revenue is that Section 5(3) required that all important goods must always, at all time and at all places be accompanied by a permit. We are unable to accept this contention. After the import, the goods became a part and parcel of the mass of other like goods in India. There was no duty to keep the permit with the consignment of imported goods for all times and at all places. Nor was the importer under a duty to keep the consignment intact in his hands. He could sell portions of it to different buyers and obviously he could not give the permit to every consumer. He could import rubies from Burma by land and by sea. It was not necessary to keep any permit with the rubies imported by sea after their clearance from the Customs House. Nor was the position different in case of rubies imported by land. A consumer wearing a necklace made of rubies was not expected to carry the permit for the rubies in her bag. Under the Land Customs Act a customs clearance permit was necessary for the passage of goods imported or about to be exported through the land customs station. For this reason Section 5 (3) read with Section 7(1) (a) required that the goods so passing through the land customs station must be accompanied by the permit. The rule could provide that the important goods should be accompanied by the permit even after such passage. As already stated. The rule required that important Chinese silver dollars should be accompanied by the permit during the entire journey up to their ultimate destination. In such cases, Section 5(3) was infringed if the permit covering the goods was not produced on demand by any Land Customs officer. Except in such cases, Section 5(3) did not apply, and it was not necessary to keep the permit with the goods. We hold that Section 5(3) was not infringed when the carriers did not produce the permit covering the goods at the Sonapur airstrip on May 18, 1957 and the goods could not be confiscated under Section 5 (3).

11. Nor were the goods liable to confiscation under Section 7 (1) of the Land Customs Act. The appellant imported 1,65,000 dollars from Tibet under two Reserve Bank licences and two import

permits. There was no distinguishing mark on any dollar. The appellant was found in possession of 1,65,000 dollars only. No attempt was made to prove that the appellant was in possession of another consignment of 82,500 dollars. At the time of import the dollars were packed in 66 bags marked "HN." and 66 bags marked "H.D." The Range Officer seized 82,500 dollars packed in 66 bags marked "H.D." There is no evidence to show that the seized dollars were not covered by the permits and licences held by the appellant. The onus was on the respondents to prove that the first consignment of 66 bags bore the mark "HD." Application No. 34 accompanied the first consignment. There was nothing on application No. 34 by the Customs officers at Sonapur or at Dum Dum indicating that they had examined the bags or that the bags were found to bear the mark "HD." The summary of the diary of the Range Officer Matidhar set out in the order of confiscation does not show that the officer examined the bags. The note in the diary that the mark checked was "HD." could have been made on the basis of the mark "HD" shown in the accompanying application No. 34. Before the issue of the show-cause notice on July 17, 1957, the appellant had no occasion to produce before the Customs authorities any of the 66 bags marked "HN" which had reached Calcutta. No inference has been drawn against the appellant from their inability to produce any bags marked "HN" after July 17, 1957. On the materials on the record it is impossible to hold that the dollars seized on May 18, 1957 were smuggled goods. There was nothing by the Customs officers at Sonapur and Dum Dum on application No. 34. If the appellant desired to send smuggled "HD" bags from Sonapur to Dum Dum, they could easily obtain application No. 34 from Calcutta and send it with the consignment seized at Sonapur. Moreover, the Customs officers had not put any mark or initials on the bags, and there was nothing to prevent the appellant from putting the mark "HN." on other bags and using them for the carriage of the dollars. The conclusion is irresistible that due to the inadvertence of the carriers the permits were interchanged and that application No. 34 was sent with "HN." bags and application No. 32 was with "H.D." bags. No inference of smuggling could be drawn from the fact that "H.D." bags were found with application No. 32. In the circumstances, the finding that the appellant had smuggled the goods and was guilty of an offence under Section 7(1) of the Land Customs Act must be characterized as perverse.

12. Nor was it proved that the appellant committed any offence under Section 8 (1) and Section 23-A of the Foreign Exchange Regulation Act read with Sections 19 and 167 (8) of the Sea Customs Act. An offence under those sections can be proved by circumstantial evidence, see *Issardas Daulat Ram v. Ram Union of India*, (1962) Supp 1 SCR 358 = (AIR 1966 SC 1867). In the present case there was no evidence either direct or circumstantial to prove the offence. The appellant had valid Reserve Bank licences for the import of 1,65,000 dollars. Those licences were not examined nor seized by the Customs officials and no attempt was made to prove that the licences did not relate to the dollars seized on May 18, 1957. It follows that the dollars were not liable to confiscation under any provision of law.

13. Having regard to the facts on the record, no Tribunal could reasonably come to the conclusion that the dollars were liable to confiscation if they properly understood the relevant enactments. In the circumstances, the order of the Collector confiscating the goods is liable to be quashed by a writ of certiorari; see *Halsbury's Laws of England*, 3rd Edn., Vol. II, Act, 119, pp. 62, 63. In *Regina v. Medical Appeal Tribunal*, (1957) 1 QB 574 at p. 582, the Court held that an assessment of 20 per cent disablement must, having regard to the facts appearing on the record, be held to be erroneous in point of law and based upon a misconstruction of Regulation 2 (5) of the National Insurance

(Industrial Injuries) (Benefits) Regulation, 1948, and the award of the Medical Appeal Tribunal was, therefore, liable to be quashed by a writ of certiorari. Denning L. J., observed.

"No reasonable person, who had proper regard to Regulation 2 (5) could have come to such a conclusion. It is now settled that when a Tribunal come to a conclusion which could not reasonably be entertained by them if they properly understood the relevant enactment, then they fall into error in point of law; see *Edwards (Inspector of Taxes) v. Bairstow*, (1956) AC 14: When the primary facts appear on the record, an error of this kind is sufficiently apparent for it to be regarded as an error on the face of the record such as to warrant the intervention of this Court by certiorari."

14. This conclusion is sufficient to dispose of the appeal. It is, therefore, unnecessary to examine the contention that the impugned orders were passed in contravention of the principles of natural justice.

15. In the result, the appeal is allowed with costs. The order passed by the High Court is set aside and the writ petition filed by the appellant is allowed. The order of confiscation of the Chinese silver dollars is quashed and the respondents are directed to return them to the appellant.

Appeal allowed.