

Becker Gray and Co. (1930), Ltd. and Others

Vs

Union of India Another

Civil Appeal Nos. 1178-1180 of 1967

(S. M. Sikri, V. Bhargava, I. D. Dua JJ)

23.01.1970

JUDGMENT

BHARGAVA, J. -

1. The appellants in these appeals were exporters of Jute Carpet Packing Cloth and, in connection with some exports by them between the period January 1957 to January 1963, penalties have been imposed on them under Section 167(8) of the Sea Customs Act for contravention of Section 12(1) of the Foreign Exchange Regulation Act No. 7 of 1947 (hereinafter referred to as "the Act") in view of the provisions of Section 23-A of the Act and Section 19 of the Sea Customs Act by the Adjudication Officer. Their appeals to the Central Board of Excise and Customs (hereinafter referred to as "the Board") were dismissed, though the amounts of penalties imposed were reduced. The order of the Board dismissing the appeals has been challenged in these appeals before us by special leave.

2. The Board based its decision for upholding the penalties on the finding that the declarations given in purported compliance with Section 12(1) of the Act were defective in two respects. One defect found was that, in the declarations, the invoice value of the goods was shown at a figure lower than the real sale value. The second defect found was that, in the declarations, it was stated that the invoice value declared was the full export value of the goods and was the same as that contracted with the buyer whereas, in fact, the goods had not been sold to the buyer and were being exported on consignment basis, so that the correct declarations should have been that the declarations contained a fair valuation of the goods which were unsold. The declarations were given in Form G.R.I. prescribed by the Rules framed under section 27 of the Act. On behalf of the appellants, the argument advanced was that these defects in the declarations did not amount to contravention of the restrictions imposed by Section 12(1) of the Act, so that the imposition of these penalties was not justified.

3. So far as the question of under-valuation of the exported goods in the declarations or the documents accompanying the declaration is concerned, reliance was placed on the decision of this Court in *Union of India and Others v. M/s. Rai Bahadur Shreeram Durga Prasad (P) Ltd. and Others* ((1969) 1 SCC 91) where this Court held that under-valuation in declaration under Section 12(1) of the Act does not amount to contravention of the restriction imposed by that provision. That decision is fully applicable to the present case before us on this point and, in view of that decision, the imposition of the penalties, on the basis that the under-valuation of the goods amounted to contravention of Section 12(1), is unjustified. We may add that we see no justification for granting the request of Mr. Bindra, learned counsel for the respondents, that decision should be reconsidered by a larger Bench.

4. Mr. Bindra, however, urged that, in these cases, there was the distinctive features that the Board also found that the declarations were further incorrect inasmuch as the goods were declared to have been sold, while they were being exported on consignment basis as unsold goods, and it was further stated in the declarations that the full export value of the goods is the value shown instead of stating that it was the fair valuation of unsold goods. The finding recorded by the Board, no doubt, shows that the declaration required to be made under the Rules in Form G.R.I. contained incorrect information; but that incorrect information related to points on which Section 12(1) does not require a declaration. A declaration, which is in contravention of the Rules or the Forms prescribed under the Rules, may be penalised under Section 23 of the Act, but such contravention will not attract the provisions of the Sea Customs Act. Under Section 230A of the Act, only a breach of restriction imposed by Section 12(1) of the Act is to be deemed a contravention of restriction imposed by Section 19 of the Sea Customs Act. An incorrect declaration in contravention of the Rules made under Section 27 of the Act is not to be deemed a contravention of any restriction imposed by Section 19 of the Sea customs Act. It is therefore, quite clear that, in these cases, the imposition of the penalties under Section 167(8) of the Sea Customs Act was totally unjustified. Consequently, these appeals are allowed with costs, and the orders of the Adjudication Officer, and the Board imposing the penalties under Section 167(8) of the Sea Customs Act are set aside. Penalties, if recovered, shall be refunded.

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