New Central Jute Mills Co. Ltd.

Vs

The Assistant Collector of Central Excise, Allahabad and Others

Civil Appeal No. 460 of 1970

(J. C. Shah, K. S. Hegde, A. N. Grover JJ)

08.09.1970

JUDGMENT

GROVER, J. -

1. This is an appeal by special leave from a judgment of the Allahabad High Court dismissing a writ petition by which the appellant challenged the validity of a warrant issued by Assistant Collector, Central Excise, Allahabad, authorising the Superintendent, Central Excise, Varanasi, to enter certain premises, search the same and seize the documents there-from.

2. The appellant, which is a public limited company having its registered office at Calcutta, owns and runs a factory known as Sahu Chemicals and Fertilizers at Varanasi where chemicals such as ammonia and soda ash are manufactured. In February, 1962, excise duty was fixed on manufacture of ammonia for the purpose of fertilizers at Rs. 25/- per metric ton, the rate being Rs. 125/- per metric ton if it was used for other purposes. The notification by which the aforesaid duty was payable was later withdrawn by means of another notification, dated March 1, 1964, and thereafter no excise duty was required to be paid on the manufacture of ammonia. For the period from May, 1962, to the beginning of March, 1964, the appellant had paid duty at the rate of Rs. 25/- per metric ton on the ground that ammonia had been utilised for the purpose of manufacture of chemical fertilizer. The Central Excise authorities, however, had received information that part of the ammonia had been utilised for purposes other than the manufacture of fertilizers on which higher duty of Rs. 125/- per metric ton was payable. It was considered that there had been evasion of duty, On May 11, 1968, the Assistant Collector issued a warrant for the search and seizure of goods and documents pursuant to which the premises of the factory at Varanasi were searched on May 11, 12 and 13, 1968, and various documents were seized.

3. The writ petition was heard in the first instance by the learned single Judge who dismissed it. In appeal his judgment was upheld by the Division Bench. Three contentions were raised before the Division Bench; the first was that Section 12 of the Central Excise and Salt Act, 1944, hereinafter called the "Act" was void as the powers delegated to the Central Government by the Legislature were excessive and beyond permissible limits. The second point was that the Sea Customs Act, 1878, having been repealed it was not open to the Central Government under Section 12 of the Act to apply Section 105(1) of the Customs Act, 1962, to the Act and the notification, dated May 4, 1963, by which this was done was illegal and ultra vires. The third was that the search and seizure made by the respondents under the impugned authorisation, dated August 11, 1968, and the authorisation itself were not in accordance with the provisions of Section 105 of the Customs Act, 1962.

4. Section 12 of the Act is in the following terms :

> "Section 12 : Application of the provisions of Act VIII of 1878 to Central Excise Duties. - The Central Government may, by notification in the official Gazette declare that any of the provisions of the Sea Customs Act, 1878, relating to the levy on and exemption from customs duties, drawback of duty, warehousing offences and penalties, confiscation, and procedure relating to offences and appeals, shall, with such modifications and alterations as it may consider necessary or desirable to adapt them to the circumstances, be applicable in regard to like matters in respect of the duties imposed by Section 3."

When the Act was enacted Section 172 of the Sea Customs Act, 1878, which could be applied to the Act under Section 12 provided :

> "Section 172. - Any Magistrate may, on application by a Customs-Collector, stating his belief that dutiable or prohibited goods (or any documents relating to such goods) are secreted in any place within the local limits of the jurisdiction of such Magistrate, issue a warrant to search for such goods.
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> Such warrant shall be executed in the same way and shall have the same effect, as a search warrant issued under the law relating to Criminal Procedure."

It may be mentioned that the words "or documents" were inserted by the Sea Customs Amendment Act, 1955. After the enactment of the Customs Act, 1962, by the notification, dated May 4, 1963, as amended by the notification, dated February 6, 1965, amongst other provisions of the Customs Act, 1962, sub-section (1) of Section 105 and Section 110 were made applicable with certain modifications of a minor nature under Section 12 of the Act. The material part of these sections are reproduced below :

> "Section 105(1) : Power to search premises. - (1) If the Assistant Collector of Customs, or in any area adjoining the land frontier or the coast of India an officer of Customs specially empowered by name in this behalf by the Board, has reason to believe that any goods liable to confiscation or any documents or things which in his opinion will be useful for or relevant to any proceeding under this Act are secreted in any place, he may authorise any officer of customs to search or may himself search for such goods, documents or things."
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> "Section 110(3). - The proper officer may seize any document or things which, in his opinion, will be useful for, or relevant to, any proceeding under this Act."

5. On the first point it has been urged on behalf of the appellant that Section 12 of the Act gave unrestricted and unlimited power to the Central Government to modify or alter the provisions of the Sea Customs Act, 1878, and to apply the provisions of the Act with such modifications and alterations as the Central Government might consider appropriate. Modification, it has been pointed out, may be permissible and may not fall within the vice of excessive delegation because the basic structure is not changed but alteration, it is suggested, has a much wider connotation and it embraces even the changing of the essential pattern of a thing or object. Such a power inherently involves the making of changes even in regard to matters pertaining to legislative policy.

6. In our opinion the above contention is purely of academic interest in the present case. In the notifications which were issued applying, inter alia, Section 105(1) and Section 110 of the Customs Act, 1962, no such changes have been made as can possibly fall within the meaning of the word "alterations". It has been pointed out in the previous decisions of this court that the power to restrict and modify does not import the power to make essential changes. It is confined to alterations of a minor character and no change in principle is involved. See In re Delhi Laws Act, 1912. ((1951) SCR 747; AIR 1951 SC 332; 1951 SCJ 527) It was conceded before the High Court and has not been urged before us that the word "modifications" could not be taken as conferring on the Central Government any legislative power which was in excess of the permissible limits. Objection was taken only with regard to the word "alterations" but that word must be understood in the sense in which it was open to the Legislature to employ it legitimately and in a constitutional manner. No question is thus involved of delegation either of any essential legislative functions or any change of legislative policy.

7. The second contention has hardly any merit. Section 8(1) of the General Clauses Act provides that where any Central Act repeals and re-enacts with or without modification any provision of a former enactment then references in any such enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted. By virtue of this provision it cannot be disputed that in Section 12 of the Act the Customs Act, 1962, can be read in place of the Sea Customs Act, 1878. An attempt has been made to argue that Section 12 of the Act empowers incorporation of the provisions of Sea Customs Act, 1878, in the Act itself and whenever a notification is issued under it such provisions of the Sea Customs Act as have been applied become incorporated as an integral part of the Act. Section 8 of the General Clauses Act would not be applicable to a case of such incorporation and it can only apply if Section 12 can be regarded as containing a reference to the provisions of the Sea Customs Act. In Secretary of State for India in Council v. Hindusthan Co-operative Insurance Society Ltd., (58 IA 259) it was accepted as a settled rule of construction that where a statue is incorporated by reference into a statute the repeal of the first statute does not affect the second. The law laid down by the Privy Council can have no applicability to the present case. Section 12 of the Act did not bodily lift, as it were, certain provisions of the Sea Customs Act, 1878, and incorporate them as an integral part of the Act. It only empowered the Central Government to apply the provisions of the Sea Customs Act, 1878, with such modifications and alterations as might be considered necessary or desirable by the Central Government for the purpose of implementation and enforcement of Section 3 of the Act. No exception could be taken to the view of the High Court that Section 12 contained a provision delegating limited powers to the Central Government to draw upon the provisions of the Sea Customs Act, 1878, for the purpose of implementing Section 3 of the Act. In The Collector of Customs, Madras v. Nathella Sampathu Chetty and Another, ((1962) (3) SCR 786; AIR 1962 SC 316; (1962) 1 SCJ 68) this court examined at length the meaning and effect of incorporation by reference of one statute into another and discussed the Privy Council case referred to before in detail. Section 8(1) of the General Clauses Act, it was pointed out, dealt with reference or citation of one enactment in another without incorporation. The usual or recognised formulae generally employed to effect incorporation were considered, for instance the words used in Section 20 of 53 and 54 Vict. Ch. 70-Housing of the Working Classes Act, 1890, the words used were :

> "shall, for that purpose, be deemed to form part of this Act in the same manner as if they were enacted in the body thereof."

In 54 and 55 Vict. Ch. 19, Section 1(3), the language employed was :

> "The provisions of Section 134 of the said Act (set out in the schedule) shall apply as if they were herein enacted."

It is unnecessary to mention the other provisions because a comparison of the recognised formulae with the text of Section 12 of the Act shows that the provisions of the Sea Customs Act, 1878, were not meant to be incorporated in the Act and were only to be applicable to the extent notified by the Central Government for the purpose of the duty leviable under Section 3.

8. Another aspect which has been presented under the second contention is that the impugned notification is bad and stands vitiated because under the previous notification which applied Section 172 of the Sea Customs Act, 1878, it was a Magistrate who had to bring his judicial mind to bear on the expediency or desirability of issuing a warrant for search whereas under the present notification after the enactment of the Customs Act, 1962, it is the Assistant Collector of Customs who performs executive functions and who has been empowered to issue the warrant for search and seizure. The decision of this court in Collector of Customs and Excise, Cochin and Others v. A. S. Bava, ((1968) 1 SCR 82; AIR 1968 SC 13; (1968) 1 SCJ 658) has been sought to be pressed into service in support of the argument that extension of Section 105(1) is illegal. In that case the provision of Section 129 of the Sea Customs Act, 1878, had been applied under Section 12 of the Act. Section 129 dealt with the procedure relating to appeals and required an appellant to deposit pending the appeal the duty or penalty imposed and empowered the appellate authority, in its discretion, to dispense with such deposit pending the appeal in any particular case. There was a provision in the Act itself, Section 35, which gave an unfettered right of appeal to a person aggrieved by any decision or order made under the Act. It was in these circumstances that it was held that Section 129 of the Sea Customs Act, 1878, could not be made applicable so as to whittle down the substantive right of appeal conferred by Section 35 of the Act. The ratio of that decision can afford no assistance to the appellant in the present case. By the notification issued under Section 12 of the Act after the enactment of Customs Act, 1962, the previous notification under the Sea Customs Act, 1878, stood superseded and no question survives with regard to the validity of the notification issued in 1963 and amended in 1965.

9. On the third point an attempt was made to argue that the Assistant Collector, while issuing the warrant for search and seizure did not apply his mind to the relevant and necessary facts. Our attention has been invited to the warrant itself in which the documents have not been particularised or specified but the words "certain documents" have been used. The learned single Judge dealt with this matter fully and repelled the contention that there was no relevant material before the authority upon which the belief could be founded in terms of Section 105(1) of the Customs Act, 1962, by the Assistant Collector. We find no merit in this contention.

10. The appeal fails and it is dismissed with cost.

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