

Messrs. Lokenath Tolaram, Etc.

Vs

B. N Rangwani and Others

Civil Appeals Nos. 1109

(CJI A. N. Ray, K. K. Mathew, Y. V. Chandrachud, P. N. Bhagwati JJ)

08.11.1973

JUDGMENT

RAY, C.J. -

1. These three appeals are by certificate from three judgment of the Bombay High Court. The main judgment is dated August 31, 1970 in Civil Appeal No. 1133 of 1971. The judgments in the other two appeals are dated September 1, 1970 following the judgment in Civil Appeal No. 1133 of 1971.

2. In Civil Appeal No. 1133 of 1971 the appellants carry on business inter alia as manufacturers of cotton yarn and cotton fabrics. The first five respondents are the Central Excise Authorities. The 6th respondent is the Bank. Between March 11, 1963 and March 20, 1963 the Central Excise Authorities conducted search at the factory and mill premises belonging to the appellants. The Excise Authorities seized 1662 bales of processed and grey cotton fabrics belonging to the appellants. The 6th respondent, the Bank was the pledgee of the seized goods,. The goods were lying in the godown and bonded store rooms at the mill premises and the Bank was in possession of the same under a cash credit arrangement with the appellants. The Excise Authorities also seized several books of accounts, documents, vouchers belonging to the appellants and lying at the mill premises.

3. On April 8, 1963 the appellants made an application under Article 226 of the constitution in the High Court at Bombay. Respondent No. 1, the Assistant Collector of Central Excise on September 16, 1963 made an application to the Collector of Central Excise respondent No. 5 for extension of time for giving notice under Section 124(a) of the Customs Act, 1962 (hereinafter referred to as the Act). On September 20, 1963 an order of extension for further period of six months was made. The appellants asked for a writ of mandamus directing the Excise Authorities to release and hand over the goods and books of accounts, documents and vouchers to the appellants.

4. Two of the grounds advanced by the appellants for the release of the goods and documents were these. First, the Excise Authorities did not issue a "show case notice" within six months of the seizure of the goods under Section 110 of the Act. Second, the order of extension was made without giving the appellants an opportunity to show cause against the grant of extension. The High Court did not accept those contentions. The High Court held that an order for extension could be made at any time within or after six months of the date of seizure. The High Court relied on a Bench decision of the Mysore High Court and held that the order of extension could not be said to be void on account of absence of opportunity to show cause against the order of extension. The High Court dismissed the application of the appellants.

5. In this appeal the only contention which was advanced on behalf of the appellants is that the order dated September 20, 1963 passed by the Excise Authorities under Section 110 of the Act is bad and therefore the appellants are entitled to the release of the goods

6. The contentions of behalf of the appellants were two-fold. First, the order dated September 20, 1963 was not within six months of the seizure of the goods, and was, therefore, illegal. Second, the order dated September 20, 1963 was made without giving an opportunity to the appellants to be heard and was, in violation of principles of natural justice.

7. Counsel for the appellants relied on the decision of this Court in *Assistant Collector of Customs v. Charan Das Malhotra*, ((1971) 3 SCR 802 : (1971) 1 SCC 697 : 1971 SCC (Cri) 321) in support of the contentions advanced in these appeals. In *Malhotra* case (*supra*) the Rummaging Staff of the Excise Authorities raided the business premises and seized goods on March 19, 1963. On March 6, 1964 the Excise Authorities served a notice under Section 124(a) of the Act to show cause why the goods should not be confiscated and penalty should not be imposed. It was contended that because the goods were seized on March 19, 1963 the initial period of six months provided under Section 110(2) of the Act expired on September 19, 1963 and *Malhotra* became entitled to the return of the goods on the ground that no notice to show cause had till then been issued. The Excise Authorities contended on the other hand that an extension of your months was applied for and was granted by the Collector of Customs on September 19, 1963. The extended period of four months expired on January 3, 1964. A further extension for two months was applied for on January 3, 1964. The Collector passed on order extending the time on February 20, 1964 a month after the extended period had expired on January 19, 1964. The other contention in that case was that *Malhotra* got no chance to resist the application for extension, and, therefore, the orders were in violation of natural justice.

8. This Court held that the right to have the watches restored to *Malhotra* accrued on January 19, 1964 and it could not be defeated by an order for extension passed on February 20, 1964 after the first extended period lapsed on January 19, 1964. It was also held that *Malhotra* was entitled to be heard before the extension was made. This court in *Malhotra* case (*supra*) held that the decision of the Mysore High Court (*Ganeshmul v. Collector Central Excise*, AIR 1968 Mys 89) on which the Bombay High Court relied was wrong.

8. Counsel for the Excise Authorities contended that in these appeals no notice under Section 110 of the Act was required to be given by reason of special agreement between the appellants and the Excise Authorities during the pendency of the writ petition in the High Court. It was submitted that because of the agreement there was also no question of violation of principles of natural justice. It was said by the Excise Authorities that the appellants had no locus standi to ask for the return of the goods because the goods had been in the possession of the respondent Bank as pledgee and the Excise Authorities seized the goods from the possession of the Bank.

10. The High Court admitted the petition of the appellants in Civil Appeal No. 1133 of 1971 on April 8, 1964. On April 9, 1964 the Chief Justice of the High Court passed an order directing the petition to be heard by a Division Bench. The Bench decision was given after six years on August 31, 1970. During the pendency of the petition the petition the appellants took out several notices of motion and obtained various interlocutory orders by consent of parties. These consent orders were dated July 29, 1963, November 19, 1965, December 2, 1966 and September 3, 1969.

11. Broadly stated the pattern of these consent orders was as follows. The appellants will deposit

with the Collector of Central Excise government securities of certain value in order to obtain release of quantities of the seized goods in favour of the bank. In the event of the appellant succeeding in the petition the securities deposited shall be returned. In the event of the appellants failing in the petition the securities shall be retained by the Excise Authorities for the purpose of adjudication proceedings. In the event of the Collector of Central Excise holding that the goods are not liable to confiscation or that the appellants are not personally liable for any penalty or excise duty the said securities shall be returned. The appellants agree and undertake that the securities deposited shall be treated as sale proceeds of the said goods and treated as goods so seized for the purpose of any adjudication proceedings. The appellants further agree that they shall not raise any contention in the adjudication proceedings that the said proceedings will not be valid on the ground that the goods have been released to the appellants and are not available for confiscation or imposition of fine in lieu of confiscation.

12. The appellants pursuant to the consent orders aforesaid deposited Rs. 9,03,300 with the Excise Authorities and executed bonds for the sum of Rs. 15,51,080 in favour of Excise Authorities on different dates and obtained release of 1662 bales and 56 boars.

13. In Civil Appeal No. 1132 of 1971 the Excise Authorities on April 27 and 29, 1963 seized 432 pieces of grey cotton fabrics and 136 bales containing cotton fabrics and fents. The Excise Authorities also seized books of accounts and documents of the appellants on those two dates. On September 20, 1963, the Excise Authorities passed an order under Section 110(2) of the customs Act extending the period of giving a "show cause notice" The appellants on May 10, 1963 filed a petition in the High Court and asked for release of the goods on grounds similar to the other appeal. The High Court dismissed the petition of the appellants.

14. The only contention advanced in this appeal was that the order dated September 20, 1963 was passed without giving an opportunity to the appellants to be heard. It was, therefore, said on behalf of appellants that on the ruling of this Court in Malhotra case (supra) order dated September 20, 1963 was illegal.

15. In Civil Appeal No. 1132 of 1971 the respondents on the other hand contended that the appellants were not entitled to be heard by reason of agreements embodied in consent orders identical to those in Civil Appeal No. 1133 of 1971. The consent orders provided execution of bonds as well as deposit of amounts of money by the appellants in favour (sic) the Excise Authorities against release of the goods. The parties agreed that the deposits of the bonds were to be treated as goods so seized for the purpose of adjudication proceedings. The appellants took delivery of the seized 136 bales and deposited on May 5, 1965, May 5, 1966 and April 22, 1970 in lieu thereof amount aggregating Rs. 99,000 and executed bonds of the value of Rs. 1,80,000.

16. In Civil Appeal No. 1109 of 1971 the Excise Authorities seized 477 and 91 aggregating 568 bales of cotton fabrics of the appellants on March 16, 1963. The Excise Authorities also seized books of accounts and documents of the appellants. The appellants on May 10, 1968 made an application under Article 226 of the Constitution in the High Court of Bombay. The appellants asked for a writ of mandamus directing the release of the goods and the books of accounts. The High Court did not accede to the request of the appellants.

17. The two contentions of the appellants in Civil Appeal No. 1109 of 1971 were that the order dated September 20, 1963 extending the period of giving "show cause notice" was illegal on grounds similar to those in Civil Appeal No. 1133 of 1971. The respondents in Civil Appeal No.

1109 of 1971 repeated the same answers that the ruling in Malhotra Case (supra) does not apply by reason of agreement between the appellants and the respondents embodied in similar consent orders in interlocutory proceedings in the High Court. During the pendency of the proceedings in the High Court the appellants deposited with the Excise Authorities between the month of April, 1966 and the month of August, 1968 Rs. 3,16,016 and executed bonds for the sum of Rs. 4,44,059. The appellants obtained release of the goods namely 568 bales. The amounts deposited were agreed between the parties to be sale proceeds of the goods and treated as goods as seized for the purpose of adjudication proceedings.

18. The Excise Authorities may under Section 110(1) of the Act seize goods if the proper officer has reason to believe that the goods are liable to confiscation. Where goods are seized under Section 110(1) of the Act and no notice in respect thereof is given under Section 124(a) of the Act within six months of the seizure of the goods the goods shall be returned to the person from whose possession they were seized. Section 124(a) of the Act states that no order confiscating any goods or imposing any penalty on any person shall be made under Chapter XIV of the Act unless the owner of the goods or such person is given a notice in writing informing him of the grounds of confiscation or imposition of penalty. Section 110(2) of the Act contains a proviso that the period of six months may on sufficient cause being shown be extended by the Collector of Customs for a period not exceeding six months.

19. In Civil Appeals Nos. 1133 and 1109 of 1971 the order of extension on September 20, 1963 was beyond the period of six months from the date of seizure. In Civil Appeal No. 1132 of 1971 the order was in time. Therefore, the orders for extension of time to serve the notice under Section 124(a) of the Act could have been exposed to infirmities of limitation as to time (though we do not express any opinion upon it) and observance of principles of natural justice but for the special agreement in the consent orders between the parties in these appeals.

20. Counsel for the appellants contended that if the order dated September 20, 1963 was not within six months of the seizure of the goods, the appellants were entitled to release of the goods. All the goods have already been released to the appellants. The release by reason of terms of consent by and between the appellants and the Excise Authorities during the pendency of the appeals in the Bombay High Court. It was next said on behalf of the appellants that the amounts deposited represented the goods and the appellants were entitled to return of the amounts deposited. The contention of the appellants is unsound and unacceptable. The amounts of money which are now retained by the Excise Authorities represent the goods by reason of special agreement between the parties. These agreement came into existence before as well as after September 20, 1963. After the appellants had obtained release of the goods in accordance with the terms of special agreement embodied in the consent terms, the goods went out of the province of application of Section 110 of the Act for extension of time for serving a notice.

21. There cannot be any question of violation of principles of natural justice or any lack of opportunity to the appellants to show cause in regard to the order dated September 20, 1963 extending the time for giving the notice under Section 124 of the Act contemplated in Section 110 of the Act. The appellants themselves asked for release of the goods on depositing moneys and executing bonds representing the value of the goods released. The agreements in the present appeals establish that the parties on consideration of all the facts and circumstances waived notice for extending the time within six months of the seizure of the goods.

22. The Excise Authorities are also right in their contention that the appellants have no locus standi

to ask for release of the goods because the Bank was in possession of the goods as the pledgee and the Excise Authorities seized the goods from the possession of the Bank.

23. The moneys deposited and the bonds executed by the appellants are really the substituted goods for the purpose of adjudication as to whether there can be any confiscation of goods or imposition of penalty. The parties agreed that the Excise Authorities would retain the securities for the purpose of adjudication proceedings in the event of failure of the appellants in the writ petitions filed by them.

24. The goods were seized in 1963. Long time has lapsed. The Excise Authorities should immediately take steps and complete the adjudication proceedings.

25. For these reasons the appeals fail and are dismissed. The parties will pay and bear their own costs.

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