

Rib Tapes (India) Pvt. Ltd. and Another

Vs

Union of India and Others

Civil Appeal No. 172 of 1979

(G. L. Oza, S. Natarajan JJ)

02.09.1986

JUDGMENT

OZA, J. -

1. This appeal on special leave arises out of a judgment of the Delhi High Court dated April 4, 1978. The leave is granted on a limited question as regards the question of interpretation of sub-clause (m) of Section 111 of the Customs Act, 1962 ('Act' for short). The appellants imported 27 knitting machines as the appellant owns a hosiery factory in 1972. The appellants held an import licence for import of knitting machinery.

2. According to the customs authorities the machinery was not new as the licence permitted to import, but was old reconditioned. The customs authorities also held that the price shown by the appellant on the basis of invoice was much lower than what the price actually should be. The price shown by the appellants on the basis of invoice was Rs. 77,441 whereas according to the customs authorities the price came to Rs. 2,98,359. On this basis, a show cause notice was issued and after hearing the appellant, the Collector of Customs, Bombay by order dated December 29, 1973 found that the appellants had committed breach of Section 111(d) of the Act and also of Section 111(m) of the Act and for both the counts the penalty was imposed on the appellants. Under Section 111(d) the penalty imposed was Rs. 1,12,000 in lieu of confiscation of goods and for breach of Section 111(m) a penalty of Rs. 1,47,000 was imposed under Section 112 of the Act.

3. Against this order passed by the Collector of Customs, an appeal was filed by the appellants before the Board and the Board maintained the order passed by the Collector of Customs. On revision, the Central Government reduced the penalty from Rs. 1,47,000 to Rs. 1 lakh only. Against this the appellant preferred a writ petition before the Delhi High Court which was dismissed by a Division Bench of the High Court by its judgment dated April 4, 1978 and aggrieved by this the present appeal has been preferred.

4. So far as the penalty under Section 111(d) in lieu of confiscation was concerned, the leave has not been granted and it is not disputed that the appellants have taken away the goods after paying the duty and in this appeal therefore we are not concerned with it. The only challenge before us therefore is in respect of penalty of Rs. 1 lakh imposed under Section 111(m) of the Act.

5. It is not disputed that Section 111(m) of the Act has been amended in 1973 by Act 36 of 1973 but this amendment will not be applicable to the present case. Section 111(m) as it stood before the amendment reads as under :

Any dutiable or prohibited goods which do not correspond in any material particular with the entry made under this Act or in the case of baggage with the declaration made under Section 77 in respect thereof.

and after the Amendment Act 1973 this provision now reads like :

any goods which do not correspond in respect of value or any other particular with the entry made under this Act or in the case of baggage with the declaration made under Section 77 in respect thereof.

It is therefore clear that the word 'value' was inserted in this provision. Before the insertion of this word 'value', Section 111(m) appears to mean that if the dutiable or prohibited goods are imported which do not correspond in any material particular with the entry made under Section 46 of the Act and in case of baggage with the declaration made under Section 77, then alone Section 111(m) could be attracted.

6. Section 46 of the Act provides :

46(1) The importer of any goods, other than goods intended for transit or transshipment, shall make entry thereof by presenting to the proper officer a bill of entry for home consumption or warehousing in the prescribed form :

Provided that if the importer makes and subscribes to a declaration before the proper officer, to the effect that he is unable for want of full information to furnish all the particulars of the goods required under this sub-section, the proper officer may, pending the production of such information, permit him, previous to the entry thereof : (a) to examine the goods in the presence of an officer of customs, or (b) to deposit the goods in a public warehouse appointed under Section 57 without warehousing the same.

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(4) The importer while presenting a bill of entry shall at the foot thereof make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, relating to the imported goods.

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It is in respect of this that Section 111(m) indicated that wherever goods actually imported are different in material particulars than the goods which were shown in the bill of entry or a declaration as contemplated in Section 46 then it will be a breach of Section 111(m). The difference in particulars could be in respect of anything but value, as this sub-clause clearly shows that the difference in value could not be made the basis of breach if this sub-clause before the amendment of 1973, when the term 'value' has been introduced into this sub-clause.

7. It was contended by the learned counsel for the appellant that in fact in the decision of this Court in *Union of India v. Rai Bahadur Shree Ram Durga Prasad (P) Ltd.* [(1969) 2 SCR 727 : (1969) 1 SCC 91 : AIR 1970 SC 1597] this Court considered the question of description and came to the

conclusion that a penal provision has to be construed strictly and in absence of specific words requiring 'value' to be mentioned, it could not be inferred that any difference in value could be made the basis of penalty. Whereas learned counsel appearing for the respondents contended that although the term 'value' was not in Section 111(m) of the Act before the amendment but that will make no difference as according to him even without the term 'value' a mis-description could be interpreted to be a mis-description on the basis of value stated and ultimately the goods found to be of a higher value. By the amendment the legislature had only tried to explain or clarify the position and he contended that this was the view taken by the High Court while considering this question.

8. In Union of India case [(1969) 2 SCR 727 : (1969) 1 SCC 91 : AIR 1970 SC 1597] the Court held : (SCC pp. 108-9, paras 48 and 49)

If we are to hold that every declaration which does not state accurately the full export value of the goods exported is a contravention of the restrictions imposed by Section 12(1) then all exports on consignment basis must be held to contravene the restrictions imposed by Section 12(1). Admittedly Section 12(1) governs every type of export. Again it is hard to believe that the legislature intended that any minor mistake in giving the full export value should be penalised in the manner provided in Section 23(A). The wording of Section 12(1) does not support such a conclusion. Such a conclusion does not accord with the purpose of Section 12(1).

It is true that the regulations contained in the Act are enacted in the economic and financial interest of this country. The contravention of those regulations which we were told are widespread are affecting vital economic interest of this country. Therefore the rigour and sanctity of those regulations should be maintained but at the same time it should not be forgotten that Section 12(1) is a penal section. The true rule of construction of a section like Section 12(1) is, if we may say so with respect, as mentioned by Plowman, J. in *Re H.P.C. Productions Ltd.* [1962 Ch Dn 466, 473].

It is therefore clear that their Lordships relied on the rule of construction holding that penal provision has to be strictly construed and held that where the provision itself did not require the value to be stated for any error in respect of that, no penalty could be imposed. Learned counsel contended that it was because of this decision that the Amendment Act 1973 was passed by the Parliament and the term 'value' was inserted in Section 111(m) of the Act. Learned counsel referred to Objects and Reasons for the amendment mentioned in the Bill, which resulted in Act 36 of 1973. The material words mentioned in the Objects and Reasons for the amendment as stated in the Bill reads as under :

The amendments to these Acts proposed in the Bill mainly seek to make the punishments prescribed thereunder more severe and to make certain other provisions therein with regard to the rules of evidence and procedure with a view to removing the loopholes noticed in the working of these Acts and making their enforcement more effective.

2. The notes on clauses explain in detail the various provisions of the Bill.

Clause (2). This clause seeks to amend Section 111 of the Customs Act, 1962, with a view to providing for the confiscation of goods in cases of mis-declaration of value of imported goods irrespective of whether or not such goods are dutiable or prohibited, in order to cover cases of over-invoiced imports.

It is not in dispute that in order to interpret a particular provision and to infer the intention of the legislature, the Objects and Reasons stated in the Bill, when it is presented to the legislature, could be used. In this view of the matter it appears that before the amendment in 1973, Section 111(m) did not contemplate any difference in material particulars in respect of value but it referred to matters other than the value.

9. It is not disputed that penalty under Section 111(m) has been imposed solely on the ground that the price shown by the appellant in the declaration was much less than what was ultimately found by the Department to be the price of imported goods and in respect of this difference on price, it was held that there is a difference in material particulars which brought the matter within the mischief of Section 111(m) of the Act. But in view of the fact that the term 'value' was not in Section 111(m) before the amendment of 1973 this difference on the basis of value could not be said to be a difference in material particulars within the meaning of the language of Section 111(m) and in this view of the matter, the view taken by the authorities could not be maintained.

10. The High Court in its judgment realising this difficulty observed that this amendment where the term 'value' has now been inserted is merely explanatory and that was what was also contended by learned counsel of the respondents.

11. It is not in dispute that a penal provision has to be strictly construed and reading Section 111(m) before the amendment it is not possible to draw an inference that any difference in material particulars may be referable to 'value'. This argument therefore cannot be accepted. The scheme of Section 111(m) as it stood then nowhere referred to the difference of value as one of the ingredients which may attract this provision. In such a situation therefore if it was not the specific intention of the provision, a difference in respect of value therefore could not be said to attract this provision and on that basis no penalty could be imposed.

12. The appeal is allowed and the orders passed by the Collector, Board, Central Government and the High Court are hereby set aside. The penalty imposed on the appellant under Section 111(m) read with Section 111(d) is hereby quashed. The appellant shall be entitled to get refund of the penalty if already deposited. No order as to costs.

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