

M. Jhangir Bhatusha and Others

Vs

Union of India and Others

Civil Appeal Nos. 1924-27 of 1980

(CJI R. S. Pathak, Sabyasachi Mukharji, S. Natarajan, M. N. Venkatachaliah, S. Ranganathan JJ)

17.05.1989

JUDGMENT

PATHAK, C.J. -

1. These appeals by special leave are directed against the judgment and order of the High Court of Delhi dismissing writ petitions complaining of discriminatory treatment between the appellants and the State Trading Corporation in regard to the rate of customs duty levied on the import of edible oils. A number of writ petitions have also been filed directly in this Court by other private importers based on the same complaint. They pray for relief in terms of the same rate of customs duty as has been applied to the import of edible oils effected by the State Trading Corporation.
2. As common questions of law arise in these appeals and writ petitions and the facts are substantially similar, we propose to treat Writ Petition No. 3800 of 1980, Liberty Oil Mills v. Union of India, as the leading case.
3. On January 17, 1977 the Government of India issued a Public Notice permitting private parties to import edible oils for direct human consumption. It was not permissible to use such imported oils for the manufacture of vanaspati or for any industrial purpose. Under the Import Policy of 1978-79, the government canalised the import of edible oil so that the State Trading Corporation alone was permitted to import edible oils. Some of the private importers who had entered into firm commitments with foreign suppliers, and were now being denied permission to import the edible oils filed writ petitions in various High Courts, and these writ petitions were allowed and they were granted licences to import the edible oils.
4. Prior to March 1, 1979 the import of edible oils was exempt from customs duty, but with effect from that date the exemption was partially withdrawn and certain specified oils were made liable to import duty at 12 1/2 per cent. Exemption was granted from additional duty chargeable under Section 3 of the Customs Tariff Act, 1975. Auxiliary duty chargeable under the Finance Act was, however payable. On March 17, 1979 the government passed an order of exemption in favour of the State Trading Corporation under Section 25(2) of the Customs Act, 1962 whereby the imports of the specified oils by the State Trading Corporation were made liable to customs duty at 5 per cent only, and there was a total exemption from auxiliary and additional duty. The imports of the same specified oils by private importers were made liable to customs duty at 12.5 per cent ad valorem. The concessional rate of customs duty in favour of the State Trading Corporation was restricted to imports aggregating 3 lakh tonnes initially. That quantity was enlarged to 6 lakh tonnes on June 26, 1979. On October 31, 1979, a further order of exemption was made in favour of the State Trading Corporation granting it exemption for imports of five lakh tonnes of the specified oils, and this was

followed on March 31, 1981 by another order of exemption in respect of an aggregate quantity of 5 lakh tonnes of oil. It may be mentioned that on May 12, 1981 the import of edible oil was exempted from the levy of auxiliary duty.

5. On July 18, 1981, the government reduced the exemption granted to the import of the specified oils by private operators by raising the custom duty to 42 1/2 per cent. The exemption in favour of the State Trading Corporation continued without change. Thereafter on July 26, 1981 by Ordinance 9 of 1981 the government raised the tariff rate of customs duty to 200 per cent by amending the Customs Tariff Act, 1975. At the same time exemption was granted insofar that the effective rate of duty on the import of the specified edible oils, except rapeseed oil and soyabean oil, was fixed at 125 per cent. The exemption from auxiliary duty was withdrawn. In the result a private importer had to pay a basic duty of 125 per cent and 25 per cent on the import of edible oils. The oil seeds imported by the State Trading Corporation continued to attract customs duty at 5 per cent.

6. Writ petitions were filed in the High Court of Delhi by private importers complaining of the differential treatment accorded between the private importers and the State Trading Corporation, but these writ petitions were dismissed by the High Court, and the appeals by special leave have now been placed before us. As has been mentioned earlier, writ petitions have also been filed directly.

7. At the outset learned counsel for the private importers states that no objection is being taken to canalisation in favour of the State Trading Corporation. Nor is there any objection to the permission granted to the State Trading Corporation to import 17 lakh tonnes of edible oils. The complaint is directed against the differential treatment meted out to the private importers in the rate of customs duty.

8. The contention of the petitioners is that the discriminatory treatment has no real or substantial nexus with the proposed object of the exemption orders, having regard to the terms of Section 25(2) under which the exemption orders in favour of the State Trading Corporation have been made and, therefore, there is a violation of Article 14 of the Constitution. Section 25(2) provides :

"(2) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by special order in each case, exempt from the payment of duty, under circumstances of an exceptional nature to be stated in such order, any goods on which duty is leviable."

9. It is apparent that the power conferred on the Central Government under Section 25(2) of the Act is to be exercised by it in its subjective satisfaction. It must be satisfied that it is necessary in the public interest to pass a special exemption order. The exercise of the power is controlled by the requirement in the sub-section that the exemption order must contain a statement stating the circumstances of an exceptional nature under which the special exemption order has been considered necessary. The requirement is intended by the statute to ensure that the satisfaction of the Central Government concerning the necessity of the order is not reached arbitrarily but flows from material relevant to the object for which the power has been conferred. The circumstances recited in the exemption orders are :

"In view of high international prices of vegetable oils and in order to keep the domestic prices of vanaspati at reasonable levels, it has been felt that certain specified vegetable non-essential oils imported by the STC would need to be exempted from part of the customs duty."

10. The reason set forth in this statement have been analysed by learned counsel for the private importers and an attempt has been made to establish that there is no justification for relying on the international prices of vegetable oils not the stated desirability of keeping the domestic prices of vanaspati at reasonable levels as grounds for making the impugned exemption orders in favour of the State Trading Corporation. In detailed argument, learned counsel for the private importers urges that the public interest which could be contemplated under Section 25(2) must be the reduction of the landed cost in order to reduce the domestic prices of the oils. That object, it is said, is not served by conferring an advantage upon a particular importer even if it be the State Trading Corporation, who is engaged in the same activity in respect of the same goods. It is pointed out that the concession must relate to the goods and not to the personality of the importer. Further, it is argued, the allegation that the international prices of edible oils were high is inconsistent with the reality of the situation; on the contrary, it is pointed out, there had been a fall in the international prices of various oils. In support of the latter submission, reference has been made before us to the pleadings of the parties and a PAC report. Elaborating his submission in regard to the stated need for maintaining the domestic prices of vanaspati at reasonable levels, learned counsel for the private importers urges that the oils which are being imported by private importers were intended for direct human consumption and could have been supplied to the vanaspati industry. Reference is made to the affidavits of the parties to show that the oils imported by the petitioners could not be utilised in the manufacture of vanaspati as permission to do so had not been granted. Accordingly, the private importers say, there is no basis for the differential duty set out in the exemption orders and no real or substantial nexus between the differentiation made and the object of Section 25(2). Then, it is also urged, there is no real or substantial distinction between the private importers and the State Trading Corporation having regard to the object of the statute, the nature of customs duty, the rationale of Section 25 and the professed object of the exemption orders under Section 25(2). The State Trading Corporation, it is contended, cannot be equated with the Central Government, and we are referred to *STC v. CTO* ((1964) 4 SCR 99 : AIR 1963 SC 1811 : (1963) 33 Com Cas 1057). It is a private limited company registered under the Companies Act, 1956 and liable to be wound up under that Act, and that although it functions under the supervision of the Government of India and its directors, it is not concerned with the performance of any governmental functions, its functions being entirely commercial and in the nature of a trading activity. Reliance is also placed on *Heavy Engineering Mazdoor Union v. State of Bihar* ((1969) 1 SCC 765 : (1969) 3 SCR 995); *AP SRTC v. ITO* ((1964) 7 SCR 17 : AIR 1964 SC 1486 : 52 ITR 524) and *Vidarbha Housing Board v. ITO* ((1973) 92 ITR 430 (Bom HC)). Assuming, the private importers contend, that the State Trading Corporation can be equated with the Central Government or that it is acting on behalf of the Central Government, once the government ventures into the commercial field it dons the robes of a trader, and it cannot thereafter claim any special attribute or preference for differentiation from other traders. Learned counsel has placed before us the observation of this Court in *LIC v. Escorts Ltd.* ((1986) 1 SCC 264, 344) There is no rational basis, it is urged, for making a distinction in the imposition of customs duty in respect of the goods imported by the private importers and the State Trading Corporation as both purchased the same commodity in the open market for direct consumption, that the sales effected by them are on a commercial basis, and there is nothing to show that the State Trading Corporation sold these oils at a price lower than the market price or at subsidised prices. It is asserted that the Central Government, like any other importer, is liable to customs duty, and we are referred to Section 12 of the Customs Act. It is also complained that the differential proceeds on excessive classification, and that result in violating the doctrine of equality enshrined in Article 14 of the Constitution. Reliance is placed on *State of J&K v. T. N. Khosa* ((1974) 1 SCC 19 : 1974 SCC (L&S) 49 : (1974) 1 SCR 771, 792), *Mohammad Shujat Ali v. Union of India* ((1975) 3 SCC 76 : 1974 SCC (L&S) 545 : (1975) 1 SCR 449, 478) and *In re the Special*

Courts Bill, 1978 ((1979) 1 SCC 380 : (1979) 2 SCR 449, 478). And, finally, the private importers claim that inasmuch as approximately 17 lakh tonnes of oil were imported by the State Trading Corporation as against a mere 1 lakh tonnes of oil imported by all the private importers together, and the exemption from duty has been granted in the public interest, namely, to control or reduce the price of edible oils, the relief which should be granted is to include the imports made by the private importers within the particular customs duty rate of 5 per cent already extended to the oils imported by the State Trading Corporation. In some cases, it is alleged that if the imports effected by the private importers has to bear the duty levied upon them, the impact of the total duty would be so impossible that it would cripple the business of those private importers.

11. In reply, the learned Attorney General has laid great stress on the submission that the State Trading Corporation, in undertaking the imports, acts solely as an agent or nominee of the Government of India and all the profits and losses are on account of the Government of India, the State Trading Corporation being entitled to service charges only at one per cent irrespective of loss or profit. It is submitted that the Central Government is not liable to customs duty and we are referred to various considerations in support of that claim. It seems to us unnecessary to enter into that question because we have before us a situation where customs duty has in fact been imposed, even though at the rate of five per cent only. In accepting the imposition of customs duty, albeit at 5 per cent, neither the State Trading Corporation nor the Central Government rest their case on any claim to immunity of the Central Government from the levy of customs duty. It is not necessary, therefore, to construe the amendment made in Section 12 of the Customs Duty Act, 1962, to which both learned counsel have made reference.

12. The limited question before us is whether there is justification for the differential treatment accorded between the State Trading Corporation and the private importers. Now it is significant to note that the import of the specified oils had been entrusted exclusively to the State Trading Corporation with effect from December 2, 1978, and because the private importers had already, prior to that date, entered into contracts for purchase of the edible oils with foreign sellers, they were permitted to make the imports in question in order to honour their commitment. In other words, contracts by private importers concluded before December 2, 1978 were allowed to be worked out after that date without affecting the principle that as from December 2, 1978, the business of importing such oils belonged exclusively to the State Trading Corporation. This is the background in which the questions raised before us need to be considered.

13. First, as to the contention that both the reasons set forth in the exemption notifications under Section 25(2) of the Act are without foundation. It seems to us that the two reasons set forth in the exemption notification can constitute a reasonable basis for those notifications. It does appear from the material before us that international prices were fluctuating, and although they may have shown a perceptible fall there was the apprehension that because of the history of fluctuations there was a possibility of their rising in the future. The need to protect the domestic market is always present, and therefore encouragement had to be given to the imports effected by the State Trading Corporation by reducing the rate of customs duty levied on them. This involved a long term perspective, since the exclusive monopoly to import these edible oils was now entrusted to the State Trading Corporation. What appears to have dominated the policy of the government in issuing the exemption notifications was the consideration that the domestic prices of vanaspati should be maintained at reasonable levels. It cannot be doubted that the entire edible oil market is an integrated one, and that it is not reasonable to treat any one of the edible oils or vanaspati in isolation. It is a well accepted fact that vanaspati manufacturers constitute a powerful organised sector in the edible oil market, and a high vanaspati price would encourage an unauthorised

diversion of the edible oils to vanaspati manufacturing units, resulting in a scarcity in the edible oil market, giving rise to erratic prices and depriving consumers of access to edible oils. The need for preventing vanaspati prices ruling high was also to prevent people normally using vanaspati from switching over to other edible oils, thus leading to an imbalance in the oil market. An overall view made it necessary to ensure that domestic prices of vanaspati remained at reasonable levels. To all these considerations the learned Attorney General has drawn our attention, and we cannot say that they are not reasonably related to the policy underlying the exemption orders. So that the government would have sufficient supplies of edible at hand in order to feed the market, the learned Attorney General says, it was considered desirable and in the public interest to reduce the rate of customs duty to 5 per cent on the imports made by the State Trading Corporation. Now it is the Central Government which has to be satisfied, as the authority appointed by Parliament under Section 25(2), that it is necessary in the public interest to make the special orders of exemption. It has set out the reasons which prompted it to pass the orders. In our opinion, the circumstances mentioned in those notifications cannot be said to be irrelevant or unreasonable. It is not for this Court to sit in judgment on the sufficiency of those reasons. The limitations on the jurisdiction of the court in cases where the satisfaction has been entrusted to executive authority to judge the necessity for passing orders is well defined and has been long accepted.

14. It is true that the State dons the robes of a trader when it enters the field of commercial activity, and ordinarily it can claim no favoured treatment. But there may be clear and good reason for making a departure. Viewed in the background of the reasons for granting a monopoly to the State Trading Corporation, acting as an agent or nominee of the Central Government in importing the specified oils, it will be evidence that policy considerations rendered it necessary to make consummation of that policy effective by imposing a concessional levy on the imports. No such concession is called for in the case of the private importers who, in any event, are merely working out contracts entered into by them with foreign sellers before December 2, 1978.

15. We are also not satisfied that any of the private importers have made out that their business will be crippled or ruined in view of the rate of customs duty visited on their imports. The material before us is not sufficient to warrant any conclusion in their favour.

16. As, in our opinion, the private importers are not entitled to relief, no question arises of considering whether the exemption orders should be struck down or their benefit extended in favour of the private importers also.

17. The appeals and petitions for special leave to appeal as well as the writ petitions before us are dismissed, but there is no order as to costs.

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