

M/s Jain Exports Pvt. Ltd.

Vs

Union of India and Others

Writ Petition (Civil) No. 568 of 1989

(K.N. Singh, N.M. Kasliwal JJ)

23.01.1990

ORDER

1. This petition is directed against the order of the Customs, Excise and Gold (Control) Appellate Tribunal, no counter-affidavit has been filed on their behalf.
2. The petitioners imported several consignments of industrial coconut oil under the import licence granted to them. The Collector of Customs (Bombay) cleared the goods without any objection but two consignments of 'industrial coconut oil' were confiscated by the Collector of Customs (Kandla Port) and he imposed a redemption fine of Rs. 5 crores against the petitioners on the assumption that the imported goods were a canalised item. The petitioners challenged the order of the Collector of confiscation by a writ petition before the Delhi High Court on a number of grounds including the ground that the 'industrial coconut oil' was not a canalised item as it was not included in the expression 'coconut oil' as mentioned under entry 5 Appendix 9 of the Import Policy of 1980-81. A Full Bench of the High Court by majority held that 'industrial coconut oil' was included within the expression 'coconut oil' and as such the same was canalised item, it could not be imported by the petitioners. The High Court further held that the Collector of Customs (Kandla) had jurisdiction to confiscate the goods and release the same to the petitioners by imposing redemption fine. As regards the question of quantum of redemption fine the High Court directed the Appellate Tribunal to consider the same in appeal. Pursuant to the order of the High Court the appeal against the order of the Collector was entertained and heard by the Appellate Tribunal, Bombay. There was difference of opinion between two members of the Tribunal at Bombay, the appeal was then referred to a Full Bench of the Tribunal at Delhi. The Full Bench of Appellate Tribunal at New Delhi considered the matter and passed the impugned order dismissing the appeal on the quantum of redemption fine.
3. To complete the necessary facts, it is relevant to note that against the order of the Delhi High Court the petitioners filed special leave petition before this Court challenging the findings of the High Court that the 'industrial coconut oil' was included within the entry 'coconut oil'. The Court affirmed the order of the Full Bench of the Delhi High Court. The judgment of this Court is reported as M/s Jain Exports (P) Ltd. v. Union of India. While repelling petitioners' contention of estoppel based on the representation made by the State Trading Corporation, Union Government and other authorities of the Central Government that 'industrial coconut oil' was not a canalised item, this Court observed, that, those facts and circumstances were relevant for determining the quantum of redemption fine which is to be considered by the Tribunal in terms of the directions of the High Court. This Court did not enter into the question of quantum of redemption fine instead fine instead it left the matter open for consideration by the Appellate Tribunal according to the directions of the High Court. These directions are contained in para 72 (p. 800) of the judgment of Sachar, J. which was the majority judgment. The judgment is reported in Jain Exports Pvt. Ltd. v.

Union of India. The learned Judge observed thus :

"I would, in the circumstances, remit the matter to the Appellate Tribunal but only on the question of consideration of quantum of redemption fine. The Appellate Tribunal would hear and dispose of this matter as if it was hearing an appeal filed by the petitioner but only on the question of quantum of redemption fine. I having held that the order of confiscation or the point or other points being re-opened before the Appellate Tribunal, it will only hear and decide the question of quantum of redemption fine. Of courses, it will be open to the petitioner and the Collector to place before the Appellate Tribunal any relevant material or facts necessary for this purpose so as to enable to decide this question in accordance with law."

4. Pursuant to the above directions, the Appellate Tribunal considered the petitioners' case limited to the question of quantum of redemption fine. The Tribunal by its order dated December 5, 1986 refused to interfere with the Collector's order imposing redemption fine of Rs. 5 crores. In coming to that conclusion the Tribunal observed in para 29 of its order :

"It is thus really a Hobson's choice because there is no material before us to support either the fines imposed by the Collector or 35 per cent of the landed cost of the goods which the importers want us to adopt. We would have expected as indeed the High court had given the liberty to the importers to do, that relevant factual material would have been placed before us in support of the importer's plea for reduction of the fines. Regrettably, this has not been done. There is no allegation before use that the fines imposed by the Collector had exceeded the upper limit set by Section 125 of the Customs Act, namely, the market price of the goods less the duty chargeable thereon. In these circumstances, we would be slow to interfere with the discretion which the Collector had exercised in fixing the quantum of redemption fines unless it be shown to us (and it has not been shown to be so) that the order suffers from infirmity, bias or perversity."

The above observations of the Appellate Tribunal make it apparent that it misconceived the directions issued by the High Court.

5. Before the Appellate Tribunal the petitioners pointed out that they had bona fide imported the goods on the belief that 'industrial coconut oil' was not a canalised item and their belief was founded on a number of facts and circumstances including the letter of State Trading Corporation, order of Central Government under Section 131 (3) of the Customs Act and the clearance of petitioners' own goods by the Collector (Bombay). The petitioners further pointed out that along with the petitioners' disputed goods two other importers had also imported 'industrial coconut oil' and in those cases the Tribunal had reduced the quantum of redemption fine viz., in the case of Jayant Oil Mills Pvt. Ltd., Bombay and M/s Allana Impex (P) Ltd., Bombay. The petitioners submitted that their case was similar to those cases, therefore the Tribunal should interfere with the Collector's order. The Tribunal refused to consider these extenuating facts and circumstances on the assumption that the High Court and the Supreme Court had already taken those factors in holding that the import was illegal. The Appellate Tribunal further held in para 20 of its judgment that though the court had left the question of bona fide belief and other circumstances for the determination of the Tribunal, the observations of the court had to be given due weight. The Tribunal concluded as under :

"The circumstances of clearance of similar imports by the customs authorities at

various ports, the orders of the Board and the Central Government setting aside the orders of confiscation and fines, all these had been considered by the High Court and rejected in coming to the conclusion that the import was illegal. These, therefore, could not, again be urged now before the Tribunal as extenuating circumstances. Only fresh factual material such as sale income, expenses etc., if submitted by the importers before the Tribunal, could be taken into account now."

The above observation of the Tribunal makes it amply clear that it failed to consider the question of bona fide in proper perspective. The High Court and this Court had rejected the extenuating circumstances in determining the legality of the import, but nonetheless those factors and circumstances are relevant in determining the quantum of redemption fine. The Appellate Tribunal was bound to consider those facts and circumstances in determining the quantum of redemption fine. More so, because the Tribunal had itself observed that the Collector's order imposing redemption fine of Rs. 5 crores was not based on any material, but it refused to consider the reduction of redemption fine merely on the ground that the importers had failed to place additional material other than those which had already been considered by the High Court and the Supreme Court while determining the legality of the import. In our opinion the Tribunal committed apparent error in refusing to take into account the extenuating circumstances leading to the import of the disputed goods for purposes of determining the quantum of redemption fine.

6. While determining the question of quantum of redemption fine it is essential to consider the facts and circumstances relevant to the bona fide conduct of the importer in importing the goods. The questions of bona fide import is relevant for determining the quantum of redemption fine as held by this Court in *D. Navinchandra & Co., Bombay v. Union of India*. In this decision this Court held that while imposing fine or penalty for the import of goods in contravention of the Import Policy, the authorities should consider the plea of bona fide in the background of the facts attending to the import of the relevant goods.

7. Learned counsel for the petitioners urged that in view of the Tribunal's observation that the Collector's order imposing redemption fine of Rs. 5 crores was not passed on any material, this Court should determine the redemption fine on the basis of 35 per cent of the landing cost of the goods as has been done by the department in similar cases. We do not consider it fit or proper to determine the quantum of redemption fine as in our opinion determination of quantum of fine should be made by the statutory authorities constituted under the Act. We therefore reject this contention of the petitioners.

8. In view of the above discussion, we allow the writ petition and set aside the order of the Appellate Tribunal dated December 5, 1986 and remand the matter to the Appellate Tribunal to determine the question of quantum of redemption fine in the light of the decision of this Court in *D. Navinchandra & Co., Bombay* and also in the light of the observations contained in this judgment. We direct the Tribunal to decide the appeal within three months. It would be open to the parties to place additional material, if any, relevant for the purpose of determining the question of quantum of redemption fine. There will be no order as to costs.

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