Toolsidass Jewraj

Vs

Additional Collector of Customs and others

Civil Appeal No. 893 of 1976

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

13.03.1991

JUDGEMENT

KASLIWAL, J.:-

1.This appeal by special leave is directed against the judgment of Calcutta High Court dated 6th February, 1975 setting aside the order of the learned single Judge of the High Court dated 9th June, 1972.

2. Brief facts of the case are that M/s. Toolsidass Jewraj (hereinafter referred to as the 'petitioner firm') had been carrying on the business of export of Jute goods from India to foreign countries including United States. The petitioner-firm entered into contracts on December 19, 1961 for shipment in January, 1962 of Jute goods to M/ s. Franc Samuel and Co. of New York, through their agents M/ s. C. J. Dammann Inc. of New York, U.S.A. According to the petitioner-firm in January, 1962 the price of Jute goods appreciated considerably and to avoid severe losses the petitioner-firm through the said agent arranged for switching the shipment over to April/June, 1962. The petitioner-firm thereafter made arrangements for shipment of a consignment of 435 bales of Hessian Cloth by ss "'City of Singapore" and submitted shipping bills along with G.R.-1 forms with the Customs authorities on June 1, 1962. The gain resulting from the sale of goods was allowed to the buyers and their profit was discounted from the sale price for subsequent shipment and shown accordingly in the shipment bills and G.R.-1 forms which was thus not the full export value of the goods. On June 5, 1962 Shantimoy Mukherjee Customs Sarkar of the petitioner-firm and M. V. Ashar appeared before the Customs Appraiser and supplied to him all information regarding the consignment. The Appraiser apparently satisfied dictated to them a letter to be written by the petitioner-firm to the Customs authorities on the basis whereof the consignment could be permitted to be exported. In the letter of June 5, 1962 the adjustment of price as aforesaid was admitted on behalf of the petitioner-firm and it was further stated that there was no mala fide in the account and the firm did not want any show cause memo and would agree to abide by the decision of Customs authorities. Thereafter, they appeared before the Additional Collector of Customs, Calcutta where few questions were put to them. In the meantime s.s. "City of Singapore" left without taking the consignment.

3. The Additional Collector of Customs took the view that a sort of "phatka" business was being carried on by the so-called consignees abroad and in the said business the so-called shippers in India were playing the role of brokers. The shippers appeared to be conscious that they could not remit the aforesaid profits legally, and hence they had chosen to harness into service the medium of export business in this connection. The F.O.B. values declared by the shippers in the G.R. forms were on their own admission incorrect and the object of making these incorrect declarations was unethical and otherwise highly objectionable. The Additional Collector thus held that an attempt had been

made by M/ s. Toolsidass Jewraj to ship the goods covered by the shipping bills and the G.R. forms mentioned in the appendix, without making a declaration that the amount representing the full export value of the goods had been or will, within the prescribed period, be paid in the prescribed manner. The shippers as such had committed offences attracting the provisions of S. 167(8) of the Sea Customs Act read with Ss. 23A and 23B of the Foreign Exchange Regulation Act, 1947 (as amended). The goods were therefore liable to confiscation and the shippers were liable to personal penalty under the aforesaid sections and also under S. 167(37) of the Customs Act. The Additional Collector of Customs by his order dated June 6, 1962 gave the following directions:

> "In view of the foregoing, I confiscate the goods in question under S. 167(8) of the Sea Customs Act, read with S. 23A of Foreign Exchange Regulation Act. In lieu of confiscation, 1 impose fine of Rs. 3,00,000/ - (Rupees three lakhs only). The fine should be paid within a week hereof. A personal penalty of Rs. 50,000/ -(Rupees fifty thousand only) is also imposed on the shippers under S. 167(8) the Sea Customs Act. The personal penalty should be paid within three days of the receipt of this order."

4. The petitioner-firm preferred an appeal against the said order to the Central Board of Revenue which by its order of December 10, 1963 affirmed the findings and order of the Additional Collector. The Board, however, felt that the fine of Rs. 3,00,000/ - in lieu of confiscation was rather excessive and accordingly reduced the fine to Rs. 1,85,000/ and directed the refund of Rs. 1,15,000/which the petitioner has received without prejudice. The petitioner-firm then filed a writ petition under Art. 226 of the Constitution and proved for quashing the impugned orders dated June 6, 1962 and December 10, 1963 and to refund the aforementioned amounts of Rs. 1,85,000/- as well as the sum of Rupees 50,000/- imposed as personal penalty. Sabyasachi Mukharji, J., learned single Judge of the Calcutta High Court (as he then was) proceeded to consider the case on the assumption that the facts stated in the order of the Additional Collector to the effect that the petitioner-firm waived its right to receive show cause notice and M. V. Ashar repeated the request for disposal of the case without issuing any show cause notice. Learned single Judge held that even according to the Customs authorities a declaration was filed under S. 12(1) of the Foreign Exchange Regulation Act, 1947 which was incorrect and untrue. Learned single Judge placed reliance on the decisions of this Court in Union of India v. M/s. Rai Bahadur Shree Ram Durga Prasad (P) Ltd. ((1969) 2 SCR 727) and Becker Gray & Co. (1930) Ltd. v. Union of India ((1970) 3 SCR 445: AIR 1971 SC 116) and held that once a declaration incorrect or untrue was filed there was compliace with the provisions of S. 12(1) of Foreign Exchange Regulation Act and the Additional Collector of Customs as also the Board had no jurisdiction to pass the impugned orders. The above orders of the Additional Collector and the Board of Revenue were quashed and the authorities were directed to refund the amount.

5. The Union of India assailed the above order of the learned single Judge by filing an appeal before the Division Bench of the High Court. The Division Bench of the High Court distinguished the aforementioned cases of this Court on which reliance was placed by the learned single Judge. In the result, the Division Bench allowed the appeal, set aside the order of the learned single Judge by order dated 6th February, 1975. The petitioner-firm aggrieved against the order of the Division Bench of the High Court have come in appeal by grant of special leave.

6. It was contended on behalf of the appellant that the case was fully covered by the decision of this Court in Union of India v. M/ s. Rai Bahadur Shree Ram Durga Prasad (P) Ltd. (supra) which was further followed in Beeker Gray & Co. (1930) Ltd. v. Union of India (supra). We have thoroughly

considered the record and have perused the cases on which reliance is placed by the learned counsel for the appellant. In our view the facts of the case before us are totally distinguishable and as such the above mentioned cases do not help the appellant. The facts of the case as found by the Additional Collector of Customs are that the petitioner-firm had initially entered into four contracts dated December 19, 1961 for supply of Jute goods to M/ s. Franc Samuel and Co. of New York for shipment in January, 1962. In January, 1962 the price of Jute goods appreciated and the petitioner-firm arranged for switching the shipment over to April/June, 1962. The Petitioner thereafter made arrangements for shipment of a consignment of 435 bales of Hessian Cloth by s.s. "City of Singapore" and submitted shipping bills along with G.R.-1 forms with the Customs authorities on June 1, 1962. The full export value of goods was not correctly stated in the above documents. On June 5, 1962 M. V. Ashar appeared on behalf of the petitioner-firm and submitted a letter mentioning therein that the firm did not want any show cause memo and would agree to abide by the decision of Customs authorities. The petitioner-firm subsequently took the stand that M. V. Ashar had no authority on its behalf to waive the issue of show cause memo or to agree to abide by the decision of the Customs authorities. However, the said stand has not been believed by any of the Customs authorities or even by the High Court. It may be noted that in the meantime s.s. "City of Singapore" left without taking the consignment. The Additional Collector of Customs in these circumstances passed an order on June 6, 1962. It is, therefore, important to note that it is a case where under valuation in respect of full export value of goods was detected even before goods were actually shipped or exported. In view of the fact that the representatives of the petitioner firm was in a hurry and pressing hard for exporting the goods, it was clearly stated in the letter dated 5th June, 1962 waiving the issuance of any show cause notice and agreed to abide by the decision of the Customs authorities. A perusal of the shipping bills and G. R.-1 forms filed on behalf of the petitioner firm goes to show that the value mentioned was 802d. (per 100 yards) when in fact the full export value of the goods in the market at the relevant time was 867d. In the face of these admitted facts the Additional CoIlector of Customs correctly held that there was violation of S. 12(1) of the Foreign Exchange Regulation Act, 1947 (hereinafter referred to as the 'Act') and thus committed offences attracting the provisions of S. 167(8) of the Sea Customs Act read with Ss. 23A and 23B of the Act. It may be noted that according to the petitioner-firm's own showing the rate fixed was 955d. in December, 1961 which had appreciated to 1034d. in January, 1962 when the goods were to be exported. Thus gain was allowed to the buyers and by an agreement the shipment was switched over to April/ June, 1962. In June, 1962 the market value was 867d. but the profit of 79d. was discounted from the sale price bringing it down to [867-79] = 788d. by adding brokerage commission the value was fixed at 802d. The Additional Collector of Customs, in these circumstances, held that the explanations revealed that a sort of "Phatka" business was being carried on by the so-called consignees abroad and the shippers in India were playing the role of brokers and in that role they had undertaken to remit to them invisibly the profits earned out of the "phatka" business. The Additional Collector further held that the shippers appeared to be conscious that they could not remit the profits legally and hence they had to harness into service the medium of export business in this connection. The F.O.B. values declared by the shippers in the G.R. forms were, on their own admission, incorrect and the object of these incorrect declarations was unethical and otherwise highly objectionable on more than one ground of economics. It was not assailed at any stage of proceedings, not even before us that the actual market price of the goods in question in June, 1962 was 867d. and the value mentioned in the shipping bills and G. R. forms was shown as 802d.

7. So far as the cases of this Court in Union of India v. M/ s. Rai Bahadur Shree Ram Durga Prasad (P) Ltd. (supra) and Beeker Gray & Co. (1930) Ltd. v. Union of India (supra) are concerned were

cases wherein the controversy had arisen after the export of goods. In that context in Union of India v. M/ s. Rai Bahadur three Ram Durga Prasad 'P) Ltd. (supra) the Court observed as under at page 752 of (1969) 2 SCR):

> "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 S. 12(1) then all exports on consignment basis must be held to contravene the restrictions imposed by S. 12(1). Admittedly S. 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 S. 23(A). The wording of S. 12(1) does not support such a conclusion. Such a conclusion does not accord with the purpose of S. 12(1)."
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> The Court further observed as under (at page 753 of (1969) 2 SCR):
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> "There are two facts in every export, one relating to the goods exported and the other relating to the foreign exchange earned as a result of the export. Broadly speaking the former aspect is dealt with by the Customs authorities and the latter either by the Reserve Bank or by the Director of Enforcement....... These provisions go to indicate that so far as the value of the goods exported is concerned the matter is left primarily in the hands of the Reserve Bank, and the Customs authorities are not burdened with that work. This aspect becomes relevant in ascertaining the true scope of S. 12(1). If we bear in mind the scheme of the Act, it is clear that so far as the Customs authorities are concerned all that they have to see is that no goods are exported without furnishing the declaration prescribed under S. 12(1). Once that stage is passed the rest of the matter is left in the hands of the Reserve Bank and the Director of Enforcement."

8. In the above case the goods had already been exported and the charge was failure to repatriate a portion of foreign exchange earned by the shippers as also given declaration which did not comply with R. 5 of the Foreign Exchange Regulation Rules. The above decision was followed in Becker Gray & C . (1930) Ltd. v. Union of India (supra) where the goods which were sent on consignment basis had already left the shores of India. The declaration was filed in form G. R.-1 prescribed by Rules under S. 27. In interpreting the above decision, the Court followed the earlier decision in which it was held that under valuation in a declaration under S. 12(1) of the Act does not amount to contravention of the restrictions imposed by that provision. In the case in hand before us the Additional Collector of Customs had held that a sort of "phatka" business was being carried on by the so-called consignees abroad and the shippers in India were playing the role of brokers and in that role they had undertaken to remit to them invisibly the profits earned out of "phatka" business. It had been further held that the shippers appeared to be conscious that they could not remit profits legally and hence they had to harness into service the medium of export business in this connection. The above facts clearly disclose that the petitioner-firm had made an attempt to remit the profits to the consignees by discounting the profit of 79d. from the sale price and thus declaring the export value of the goods at a lower value. The above devices was detected even before the export of goods. Thus in our view the present case stands on totally different circumstances and the ratio of the above mentioned cases of this Court cannot be applied to the case in hand before us. The learned Judges of the Division Bench of the High Court had correctly distinguished the above cases and we find no reason to take a different view.

9. In the result we find no force in this appeal and it is accordingly dismissed with costs.

Appeal dismissed.

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