

SUREME COURT OF INDIA

Union of India

Vs.

Jain Shudh Vanaspati

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

28.11.1991

JUDGMENT

K.N. SINGH, CJI AND N.M. KASLIWAL, JJ.

1. This appeal is directed against the judgment and order of the Delhi High Court dated 22.8.1990 allowing the respondent's writ petition made under Article 226 of the Constitution and quashing the show cause notices issued to the respondent under Sections 28 and 124 of the Customs Act, 1962.

2. The respondent-Company imported 13,500 MT of RBD Palm Oil under Open General Licence from Singapore between November 1978 and March 1979. The foreign suppliers supplied the goods in stainless steel containers, and same were allowed to be cleared under Section 47 of the Customs Act. Subsequently, a show cause notice under Section 28 of the Customs Act was issued by the Assistant Collector, Bombay to the respondent-Company on the ground that the stainless steel drums were subject to levy of custom duty. The respondent- Company submitted reply to the notice. Another show cause notice was issued to the respondent Company on June 21, 1980 by the Collector, Bombay under Section 124 of the Customs Act calling upon them to explain why the stainless steel drums should not be confiscated as the import of stainless steel was prohibited. In its reply the respondent-Company asserted that it had not imported any stainless steel instead the refined oil was supplied by the foreign suppliers in stainless steel containers in accordance with the internationally accepted trade practice. It further stated that the packing material was not subject to any separate duty. The Respondent Company filed a writ petition in the High Court challenging the validity of the show cause notices. The High Court quashed the show cause notices on the findings that the normal international practice was to import edible oil in stainless steel containers, therefore, respondent did not violate any conditions of exemption contained in the Notification dated 2nd August, 1976 or the Import Control Trade Order, 1955. The respondent-Company was not liable to pay any duty on the steel containers treating the same as a separate item. The High Court further held that since the goods had been cleared under Section 47 of the Customs Act, the order of the competent authority clearing the goods could not be disturbed unless there was fraud or deliberate suppression. Since there was no fraud or deliberate suppression, the notices issued under Section 28 or 124 of the Customs Act were contrary to law and were liable to be quashed.

3. After hearing learned Counsel for the parties and having regard to the facts and circumstances of

the case and also on the perusal of the material on record, we agree with the findings recorded by the High Court that the import of the edible oil by the respondent-Company in stainless steel containers was in accordance with the international marketing practice. There was no short levy of duty as the respondent - Company was not liable to pay any separate duty on the containers, and duty had already been paid on the import of the RBD Palm Oil. We further agree with the High Court's view that the containers are not liable to be confiscated under Section 124(d), (m) of the Customs Act, 1962 therefore show cause notice issued under Section 124 of the Customs Act is illegal and the same have rightly been quashed.

4. So far as the interpretation of Sections 28 and 47 of the Customs Act is concerned we do not consider it necessary to express any opinion on the findings recorded by the High Court and we leave the question open.

5. We, accordingly, hold that the High Court was justified in quashing the show cause notice issued under Sections 28 and 124 of the Customs Act. The appeal fails and is accordingly dismissed. The appellants are directed to release the goods to the respondent.

6. There will be no order as to costs.

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