

Jain Exports Pvt. Ltd. And Another

Vs

Union of Indian and Others

Civil Appeal Nos. 4917-18 of 1991

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

29.11.1991

ORDER

1. Special leave granted.
2. These appeals are directed against the order of the Customs, Excise and Gold (Control) Appellate Tribunal, West Regional Bench, Bombay dated June 12, 1990.
3. The brief facts giving rise to these appeals are that appellant 1 is an export house and appellant 2 is its Managing Director. Appellants acquired additional licences for making imports and in September 1982 they imported two consignments of 'industrial coconut oil'. The Collector of Customs by orders dated December 17 and December 20, 1982 confiscated the goods on the ground that the import of 'industrial coconut oil' was a canalized item, but he gave an option to the appellant to redeem the goods by paying a sum of Rs. 2 crores in one consignment and Rs. 3 crores in another consignment as redemption fine. The appellants challenged the orders of the Collector of Customs by filing two writ petitions before the Delhi High Court. A Full Bench of the Delhi High Court held that the 'industrial coconut oil' was a canalised item and the appellants were not entitled to import the goods was necessary to be considered for purposes of imposition of redemption fine even though the import of goods was illegal. The High Court directed the Tribunal to decide the question of bona fide on the basis of the plea of bona fide raised by the appellants. On appeal this Court affirmed the High Court's order. The Tribunal thereupon considered the plea of bona fide raised by the appellants, but it declined to grant any relief. The appellants thereupon challenged the order of the Tribunal by means of writ petition before this Court which was allowed by an order dated January 23, 1990. This Court directed the Tribunal to reconsider the question of quantum of redemption fine in the light of the observations made in the order. Pursuant to the remand the Tribunal reconsidered the matter but refused to grant any relief on the ground that there was no valid reason for reducing the quantum of redemption fine. Hence these appeals.
4. The appellants were directed to pay redemption fine on the premise of having imported goods which were canalised under the Import Policy. The appellants' case has been that they had imported the 'industrial coconut oil' bona fide, on the belief that the same was not canalised item. Their plea of bona fide was based on the circumstances as under :
  - (1) Letter from STC dated October 30, 1980 stating that import of 'industrial coconut oil' was not canalised through them.
  - (2) The Central Board of excise and Customs' order dated January 23, 1981 holding that the import of 'industrial coconut oil' was not canalised.

(3) Order dated March 31, 1981 issued by the Government of India affirming the order of the Central Board of Excise and Customs holding that import of 'industrial coconut oil' was allowed under OGL under the Import Policy of 1980-81.

(4) In May, July 1981 and January 1982 the Collector of Customs at Bombay and Kandla cleared OGL against licences issued under the Import Policy of 1980-81.

(5) The customs authorities had themselves cleared a number of consignments of 'industrial coconut oil' of the appellants at Bombay and Kandla imported in May, July 1981 and also in January 1982.

5. The Tribunal refused to accept the plea of bona fide on the ground that the aforesaid circumstances related to Import Policy of 1980-81 but the Appellate Tribunal failed to consider the important circumstances relating to the clearance of the appellants' goods at the Port of Bombay and Kandla by the customs authorities during the currency of Import Policy 1981-82. The appellants had filed documents to show that their goods, had been imported during the currency of the Import Policy of 1981-82 after the 'industrial coconut oil' had been canalised. The Tribunal was not justified in ignoring this circumstance which supported the appellants' plea to import the same. It is contended on behalf of the appellants that the respondent-authorities have practiced discrimination against the appellants in imposing the redemption fine to the extent of 100 per cent on the price of the imported goods. The learned counsel urged that after the impugned import of the 'industrial coconut oil' by the appellants, M/s. Jayant Oil Mills Pvt. Ltd. had also imported identical goods and the same had been cleared by the Collector of Collector of Customs at Calcutta but in appeal the Appellate Tribunal imposed a redemption fine of 35 per cent of the cost of goods. The appellants pleaded for the same treatment to them but their plea was rejected by the Appellate Tribunal on the ground that the appellants were established export house and they were well versed with the Import/Export Policy and procedure and presumed to know the change in the Import Policy, consequently no concession could be granted to them.

7. After hearing the counsel for the parties at length and having regard to the facts of the case we are of the opinion that the appellants were not entitled to import the 'industrial coconut oil' under OGL as the Import Policy of 1980-81 had been amended with effect from April 3, 1981. Any import of 'industrial coconut oil' made by any importer would be illegal as under the Import Policy only the STC had authority to import the canalised item. The respondent-authorities were, therefore, justified in confiscation the goods imported by the appellants and giving option to the appellant to retrieve the goods on payment of redemption fine. We are further of the opinion that it is for the customs authorities to determine the quantum of redemption fine under the Customs Act, 1962. But in the present case in the direction of this Court in the remand order dated January 23, 1990 the Appellant Tribunal failed to exercise its jurisdiction in accordance with our direction. In the remand order we had specifically referred to the concession granted to M/s. Jayant Oil Mills Pvt. Ltd., but the Tribunal refused to grant the same concession to the appellants on the ground of the appellants being established export house. This ground for making distinction is not reasonable nor justified. We are, therefore, of the opinion that the appellants are also entitled to the same concession as granted to M/s. Jayant Oil Mills Pvt. Ltd.

8. In view of the above discussion we allow the appeals, set aside the order of the Appellant Tribunal and direct that the appellants shall pay redemption fine to the extent of 35 per cent of Rs. 5 crores which amount has been determined as the redemption fine by the authorities. If the appellants have paid any excess amount the same shall be refunded to them within six weeks, in default the

appellants will be entitled to interest at the rate of 15 per cent annum from the date of this order.

9. There will be no order as costs.

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