

Jain Exports Pvt. Ltd. and Another

Vs

Union of India and Others

Civil Appeal No. 884 of 1980

(S. P. Bharucha, S. B. Majmudar JJ)

14.08.1996

JUDGMENT

BHARUCHA, J. -

1. The correctness of the order of the High Court of Delhi dismissing the writ petition filed by the appellants before it is under challenge.
2. The appellants imported liquid caustic soda in bulk, on which customs, auxiliary and countervailing duty was payable at the aggregate rate of 92.5 per cent. The State Chemicals and Pharmaceuticals Corporation of India Ltd. (the 3rd respondent) also imported caustic soda but were required to pay duty thereon only at the rate of 10 per cent because of an exemption granted to them in the public interest under the terms of Section 25(2) of the Customs Act, 1962. The writ petition was filed by the appellants on the ground that there was discrimination; the appellants were also entitled to the exemption granted to the 3rd respondent. The writ petition prayed for the grant of such exemption; and, in the alternative, that the exemption in favour of the 3rd respondent should be declared null and void.
3. It is not now in dispute that the case would stand covered by the judgment of this Court in *M. Jhangir Bhatusha v. Union of India* [1989 Supp (2) SCC 201] but for the appellant's argument that there were special or peculiar circumstances which created an equity in its favour.
4. The learned counsel for the appellants relied upon the following passage in *Jhangir Bhatusha* case [1989 Supp (2) SCC 201] : (SCC pp. 207-09, paras 13 and 14)

"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 notifications 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 oil 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 evident 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 2-12-1978."

5. The learned counsel for the appellants submitted that special circumstances favoured the appellants in that the interim order passed by this Court on 23-4-1980, obliged the appellants to sell the caustic soda at a price that did not take duty at the rate of 92.5 per cent into account.

6. By the said interim order on the appellant's application for stay of recovery of the difference in duty, the appellants were permitted to clear the quantity of caustic soda stated therein on the condition that they furnished security to the satisfaction of the Collector of Customs, Bombay, for the difference in duty between 10 per cent and 92.5 per cent, and, in the event that the Collector was not satisfied with such security, the appellants furnished a bank guarantee for the said difference. The interim order recorded that the appellants undertook "not to sell caustic soda imported under the aforesaid licence at a rate higher than Rs. 5132 only per M.T. ex-godown, which is represented by the counsel for State Chemicals and Pharmaceuticals Corporation of India Limited as the price at

which they have sold the quantity of caustic soda imported by them".

7. According to the learned counsel for the appellants, an obligation had been imposed by this Court upon the appellants not to sell the caustic soda at more than Rs. 5132 per metric tonne. The appellants had complied with that obligation. Consequently, they had been unable to realise from the purchasers of caustic soda a price sufficient to cover the balance 82.5 per cent of duty. An equity arose in favour of the appellants by reason of the interim order and they should be permitted to pay as duty only 10 per cent as provided under its terms.

8. In the first place, the interim order was passed upon the application for stay of recovery of the difference in duty made by the appellants. If the appellants found the conditions imposed by the order unacceptable, they could have sold the caustic soda at a price higher than Rs. 5132 per metric tonne and paid duty thereon at the rate of 92.5 per cent after applying to this Court to relieve them of their undertaking. The appellants acted upon the interim order knowing full well that if the appeal was decided against them they would be required to pay duty at the rate of 92.5 per cent. Acting upon the interim order created no equity in favour of the appellants, nor are these any special or peculiar circumstances.

9. In the second place, an undertaking given to court is not an obligation imposed by the court. It is a promise voluntarily made to the court. Acting upon its own undertaking to court creates no equity in favour of the party giving it, nor is it a special or peculiar circumstance.

10. In the third place, the passage from the decision in Jhangir Bhatusha case [1989 Supp (2) SCC 201] does not assist the appellants.

11. In the fourth place, should a court come to the conclusion that an exemption is arbitrary or discriminatory or violative of Article 14, it may strike down the exemption but it cannot widen its scope so as to cover those it finds have been discriminated against. Reference in this behalf may be made to the judgment in State of M.P. v. Mohan Singh [(1995) 6 SCC 321 : 1995 SCC (Cri) 1100] to which one of us (S. P. Bharucha, J.) was a party. Paragraph 6 is self-explanatory : (SCC p. 323)

"6. Here we part company with the High Court. Having come to the conclusion that the grant of special remission to Scheduled Caste and Scheduled Tribe prisoners was unlawful, the proper course to adopt should have been to strike it down. It was beyond the High Court's power to expand the reach of the remission so as to give the benefit of it to the writ petitioners, who did not belong to the Scheduled Castes or Scheduled Tribes. The power to grant the remission lay with the State. If the power was improperly exercised, the High Court could quash the exercise. The High Court could not, in effect, grant a general remission where the State had intended it to be restricted."

12. Before we part with the appeal we should mention that it had once been allowed and that judgment and order was set aside on a review petition filed by the first respondent.

13. The appeal is dismissed with costs. The costs payable by the appellants to the first and second respondents are quantified at Rs. 25,000 and to the 3rd respondent at Rs. 5000.