

# SUPREME COURT OF INDIA

Union of India

Vs.

J.P. Electronics Private Limited

C.A.No.6412 of 2001

(Mrs.Ruma Pal and G. P. Mathur JJ.)

13.04.2004

## JUDGMENT

### **Ruma Pal, J.**

1. The appellants have challenged the order passed by the High Court permitting the re-export of certain electronic goods at the instance of the respondent.

2. The said goods arrived at the Port at Bombay on 24th July 2000. The importer was M/s. Rahul Associates but it did not clear the goods. Accordingly a notice was given by the appellants to M/s. Rahul Associates under Section 48 of the *Customs Act, 1962*. On 17th January, 2001, M/s. Rahul Associates wrote to the Customs Authorities stating that they were unable to clear the goods and that they had no objection if the respondent were allowed to re-export the goods. The respondent also wrote a letter to the Customs Authorities on 6th February, 2001 stating that it was willing to pay all the freight charges and demurrage charges for re-export of the goods. It may be mentioned, at this stage, that the Port Authorities had, in the meanwhile, issued notice on 19th September, 2001 under Sections 61 and 62 of the Major Port Trusts Act, 1960 for sale of the goods in order to recover its dues under that Act.

3. On 27th April, 2001 the respondent filed a writ petition before the High Court in which it prayed inter alia, for a mandamus directing the appellants herein as well as the Port Authorities not to sell the goods and to allow the respondent/writ petitioner to re-export the goods on payment of all legitimate dues. The High Court allowed the writ petition following the decision of this Court in *Union of India v. Sampat Raj Dugar & Anr.* reported in. In that case this Court was considering the action taken by the Customs Authorities under Section III (d) of the *Customs Act, 1962*. This Court found as a fact that the property in the goods had not passed on to the importer. In the circumstances, the owners/exporters of the goods were permitted to re-export the goods subject to the payment of all legal charges.

4. It is clear that the decision turned on the question whether property in the goods brought into the country had passed on to the importer or not. It was recognised that in certain cases,

for example when an irrevocable letter of credit is issued by the importer in favour of the foreign exporter, property in the goods could be taken to have passed on to the importer. Where the title to the goods has not passed from the exporter to the importer clearly the exporter may be permitted to re-export the goods. But if the title has passed to the importer, there is no question of the goods being re-exported at the instance of the foreign exporter.

5. The High Court appears to have proceeded on the erroneous assumption that in all cases an exporter continues to be owner of the goods merely because the importer does not choose to clear them and in effect abandons them. The issue regarding title to the goods had been squarely raised by the appellants in their counter affidavit filed before the High Court wherein they said that the title in the goods had passed on to M/s. Rahul Associates. The appellants have also drawn our attention to the invoice whereby the goods have been stated to have been sold to M/s. Rahul Associates. It is also claimed that the allegations contained in the counter affidavit have not been refuted by the respondent. According to the appellants the respondent and M/s. Rahul Associates were conspiring together to evade payment of duty in respect of an earlier consignment of identical goods which had arrived two weeks prior to the shipment in question and which had also been shipped by the respondent to M/s. Rahul Associates. It was found by the appellants that the first consignment was grossly undervalued. Proceedings had been commenced under the Customs Act, 1962 in respect of the first consignment and ultimately by an order of adjudication dated 31st May, 2001 it was found that M/s. Rahul Associates was liable to pay customs duty of more than Rs. 9 lakhs of which the customs duty of only about Rs. 4 lakhs had been paid. After adjusting this amount the difference is, according to the appellants/ recoverable by the appellants from M/s. Rahul Associates by sale of the second consignment being the goods in question under Section 142(1)(b) of the Customs Act.

6. Section 142(1)(b) of the Act would come into operation provided that goods in question belong to M/s. Rahul Associates. Dependent upon the question of title is also the relief which the respondent would be entitled to namely, re-export. The issue of title was an issue of fact which the High Court should have left to the Department to consider. As we have noted, the High Court did not consider this vital aspect of the matter at all. Despite the submissions made by the parties, we do not propose to assess the evidence ourselves. We accordingly, set aside the decision of the High Court and remand the matter back to the appropriate authorities in the Customs Department for the purpose of determining the issue whether the title to the goods in question had passed from the respondent to M/s. Rahul Associates. In the event it is found that the title had not passed, the respondent will be entitled to re-export the same subject to payment of such charges etc. which are rightfully leviable in respect of the goods. If the goods are found to belong to M/s. Rahul Associates, the respondent's claim for re-export must be rejected and it will be open to the Department to take appropriate action in respect thereof under the Act as they may be entitled to under the Act.

7. The appeal is disposed of without any order as to costs.