

SUPREME COURT OF INDIA

Commissioner of Customs (Preventive), Mumbai

Vs.

M.Ambalal

C.A.No.8235 of 2003

(D.K.Jain and H.L.Dattu JJ.)

09.12.2010

JUDGMENT

H.L.Dattu, J.

1. This appeal is by the Revenue against the Order passed by the Customs, Excise and Gold (Control) Appellate Tribunal, West Zonal Branch at Mumbai [hereinafter referred to as 'Tribunal'] in Appeal No.C/138/03 Mum dated 23.06.2003. By the impugned order, the Tribunal has allowed the appeal filed by the respondent and has set aside the original order passed by the adjudicating authority, wherein it had directed the respondent to pay a sum of `2,20,50,125/- (Rupees Two Crores Twenty Lakhs Fifty Thousand One Hundred & Twenty Five only) by way of duty under the provisions of The Customs Act, 1962 (hereinafter referred to as, "the Act") for release of the goods seized from the possession of the respondent.

2. The factual matrix in brief is as follows: In a search and seizure in the office premises of the respondent- firm conducted by the officers of Customs Department, on the basis of specific information, a large quantity of rough diamonds was recovered. The partner of the respondent-firm, Shri Maganbhai Patel was neither able to offer any satisfactory explanation nor produce any documents in relation to the import of the said diamonds, and the diamonds were seized by the officers in the reasonable belief that they are liable for confiscation under the provisions of the Act. After investigation, a Show Cause Notice was issued to the respondent and others wherein confiscation of the seized diamonds was proposed. After adjudication, the adjudicating authority passed an order confiscating the seized diamonds under Section 111(d) of the Act. However, an option was given to the respondent to redeem the seized goods on payment of redemption fine. The respondent was also asked to pay the appropriate duty on the said confiscated diamonds which were allowed to be released on payment of redemption fine. In addition, penalty was also imposed on the respondent under Section 112 of the Act. Being aggrieved by the aforesaid order, the respondent had preferred an appeal before the Tribunal. The Tribunal, by its order dated 29.12.1995, disposed of the appeal and confirmed the redemption fine of `60,00,000/- (Rupees Sixty Lakhs only) and the

penalty of `25,00,000/- (Rupees Twenty Five Lakhs only) on the respondent herein. The respondent thereafter filed a Writ Petition before the Bombay High Court and the same was withdrawn to avail the benefit under Kar Vivad Samadhan Scheme, 1998 (in short, "KVS Scheme"). Pursuant to the order passed under the KVS Scheme by the designated authority, the respondent was directed to pay an amount of `42,50,000/- (Rupees Forty Two Lakhs and Fifty Thousand only) towards redemption fine and penalty and the designated authority also gave liberty to the respondent to redeem the goods on payment of duty at the appropriate rate. The respondent thereafter requested the appellants for release of diamonds by placing reliance on the Notification No.247/76-Cus dated 02.08.1976. This request was turned down by the department and the respondent was informed that the seized diamonds would be released only after payment of duty in the light of the order (original) dated 03.12.1992. Respondent thereafter preferred a Writ Petition No.1976 of 2000 before the Bombay High Court. The said Writ Petition was dismissed by the High Court, wherein it was specifically observed "that the petitioner imported diamonds of foreign origin without a valid licence." This order was questioned before this Court in S.L.P.(C) No.1495 of 2000. This Court, by its order dated 06.09.2002, while dismissing the Special Leave Petition, directed the Additional Collector of Customs (Preventive), Mumbai or other appropriate Assessing Officer to decide the amount of duty payable under the Customs Act in respect of seized goods. The Commissioner of Customs vide order in Original No.CCP/KPM/ADJN/M&P/27/2002, quantified the duty payable by the respondent for an amount of `2,20,50,125/- (Rupees Two Crores Twenty Lakhs Fifty Thousand One Hundred and Twenty Five only) before redemption of the confiscated diamonds. Being aggrieved by the same, the respondent herein filed appeal before the Tribunal and the Tribunal, by its order dated 23.06.2003, allowed the appeal and held that the exemption would be available to the goods imported by the respondent in the light of the Notification No.247/76- Cus dated 02.08.1976. It is this order which is the subject matter in this appeal filed by the Revenue under Section 130E(b) of the Act.

3. Shri R.P. Bhatt, learned senior counsel appearing for the Revenue, submitted that the benefit of the exemption notification cannot be extended to a person who/which had illegally imported rough diamonds into the country. He further argued that the same could not be availed by those persons who did not have the licence to import diamonds, or who had smuggled rough diamonds into the country clandestinely without payment of duty. Per contra, Dr. Surat Singh, learned counsel for the respondent-firm, would contend that there is no infirmity in the order passed by Tribunal since the Tribunal, by placing reliance on the principles laid down by this Court, has granted relief to the respondent-firm.

4. The three issues that falls for our consideration and decision are :- (a) Whether the benefit of the exemption notification has been rightly granted to the respondent-firm by the Tribunal. (b) Whether the declaration made under the KVS Scheme and the subsequent payment of amount quantified under the said Scheme by the respondent-firm vis-`-vis the release of the diamonds that were confiscated by the department. (c) Whether the Baggage Rules were correctly applied by the Commissioner of Customs, while deciding the duty payable by the respondent-firm.

5. The Customs Act, 1962 is an Act to consolidate and amend the law relating to Customs. The object of the Act is to regulate the import and export of goods, into and from the shores of India, or otherwise, and determine the customs duty payable. It also attempts to fill the lacunae of the previous customs legislations, viz., the Sea Customs Act and the Land Customs Act. It also aims to counter the difficulties that have emerged over the years due to the changing economic and financial conditions; amongst them it proposes to tackle the increasing problems of smuggling both in and out of the country. The Act aims to sternly and expeditiously deal with smuggled goods, and curb the dents on the revenue thus caused. In order to deal with the menace of smuggling, the authorities are enabled to detect, conduct search and seizure, and if necessary, confiscate such smuggled goods, within the territory of India.

6. We may now briefly notice the scheme of the Act. The expression 'dutiable goods', 'duty', 'import', 'imported goods', 'importer' and 'smuggling' are defined in the following manner:-

“Dutiable Goods' means any goods which are chargeable to duty and on which duty has not been paid.

'Duty' means a duty of Customs and leviable under this Act. 'Import', with its grammatical variations and cognate expressions, bring into India from a place outside India. 'Imported goods' means any goods brought into India from a place outside India but does not include goods which have been cleared for home consumption.

'Importer' means in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes any owner or any person holding himself out to be the importer.

'Smuggling', in relation to any goods, means any act or omission which will render such goods liable to confiscation under Section 111 or Section 113 of the Act.”

7. Dutiable goods are goods whose import is permitted by the Act or any other law in force. Duty is the tax leviable on the goods occasioned by their import into India or their export out of India. The dutiability of the goods is covered by Section 12 of the Act which is the charging section. Under this Section, all goods imported into or exported from India are liable to Customs duty unless the Customs Act itself or any other law for the time being in force provides otherwise. The rate of duty is fixed by the Customs Tariff Act, 1975. "Import" and "Imported Goods" means that if goods are brought into India, meaning thereby into the territory of India from outside, there is import of goods and the goods become imported goods and become chargeable to duty upto the moment they are cleared for home consumption. The word 'importer' has been defined in the Act as importer in relation to any goods at any time between their importation and the time when they are cleared for home consumption includes any owner or any person who holding himself out to be importer. The

word 'smuggling', in relation to goods, means any act or omission which will render such goods liable to confiscation under Section 111 or Section 113 of the Act.

8. Section 11 of the Act enables the Central Government to prohibit importation or exportation of goods either absolutely or subject to conditions as specified in the notification, the import or export of the goods of any specified description. Section 11A to 11G speaks of detention of illegally imported goods and prevention of the disposal thereof. Section 12 of the Act is the charging Section. Under this Section, the duty is leviable on all imported goods. Valuation of the imported goods is done as provided under Section 14 of the Act. Section 25 of the Act empowers the Central Government to issue notifications exempting generally either absolutely or subject to such conditions as specified in the notification, goods of any specified description from the whole or any part of the Customs Act leviable thereon. The definition of imported goods has to be read along with Section 111 of the Act which deals with goods brought from place outside India. Section 111 of the Act provides for confiscation of goods and conveyances and imposition of penalties. Section 111(d) of the Act provides that any goods which are imported or attempted to be imported or are brought within Indian Custom Waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force, shall be liable for confiscation. Section 112 of the Act provides for penalties for improper importation of goods.

9. The Central Government, in exercise of its power under Section 25(1) of the Act, has issued Notification No.247-Cus. dated 02-08- 1976 exempting certain articles from payment of duty. For better understanding the list between the parties, the notification is extracted. It reads as under:-

“Exemption to raw pearls, rubies, emeralds and sapphires, rough diamonds, etc.- In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts each of the articles specified in column (2) of the Table annexed hereto and falling within Chapter 71 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) when imported into India from the payment of so much of the duty which is specified in the said First Schedule, as is in excess of the rate of duty mentioned in the corresponding entry in column (3) of the said Table.

TABLE

Sl. No Description of article Rate of duty (1) (2) (3)

1. Raw pearls, other than cultured pearls Nil

2. Rubies, emeralds and sapphires, unset Nil and imported uncut

3. Rough diamonds Nil”

10. It is settled law that the notification has to be read as a whole. If any of the conditions laid down in the notification is not fulfilled, the party is not entitled to the benefit of that notification. The rule regarding exemptions is that exemptions should generally be strictly interpreted but beneficial exemptions having their purpose as encouragement or promotion of certain activities should be liberally interpreted. This composite rule is not stated in any particular judgment in so many words. In fact, majority of judgements emphasize that exemptions are to be strictly interpreted while some of them insist that exemptions in fiscal Statutes are to be liberally interpreted giving an apparent impression that they are contradictory to each other. But this is only apparent. A close scrutiny will reveal that there is no real contradiction amongst the judgements at all. The synthesis of the views is quite clearly that the general rule is strict interpretation while special rule in the case of beneficial and promotional exemption is liberal interpretation. The two go very well with each other because they relate to two different sets of circumstances.

11. The notification issued by the Central Government in exercise of the powers conferred by Section 25(1) of the Act exempts the articles enumerated in the table annexed when imported into India from payment of duty under the Act. The language used in the notification is plain and unambiguous. Therefore, we are required to consider the same in their ordinary sense. A construction which permits one to take advantage of one's own wrong or to impair one's own objections under a Statute should be disregarded. The interpretation should as far as possible be beneficial in the sense that it should suppress the mischief and advance the remedy without doing violence to the language.

12. From the wording of the above exemption notification, it is clear that the benefit of the exemption envisaged is for those goods that are imported. According to Section 2(25) 'imported goods' has been defined to mean "...any goods brought into India from a place outside India but does not include goods which have been cleared for home consumption." It is necessary that the above definition is read along with Section 11, Section 111 and Section 112 of the Act, which provide for detection of illegally imported goods and prevention of the disposal thereof, confiscation of the goods and conveyances and imposition of penalties respectively. Under Section 111(d) of the Act, any goods which are imported contrary to any prohibition imposed by or under this Act or any other law for the time being in force shall be liable for confiscation. The goods which have been seized in this case cannot be imported into India without a licence under the Import Control Act and there is, therefore, a prohibition in law for the import of goods except in compliance with the Import Control Act. It is not the case of the respondent-firm that the goods were imported with a valid licence and, therefore any import of goods of which importation is prohibited by law, cannot be valid import under the Act. Goods so imported cannot therefore, be treated to be lawfully "imported goods" within the definition of that term in Section 2(25) of the Act. Therefore, the respondent was not entitled to the benefit of the notification. The learned counsel for the respondent would contend that by virtue of the Notification No.247-Cus dated 02.08.1976, rough diamonds are exempted from payment of duty under the Act and, therefore, adjudicating authority was not justified in directing the respondent for payment of duty under

the Act for release of the confiscated goods. We find no merit in the contention. The goods become exempted goods provided all the conditions of the notification are fulfilled. If any condition of the notification is not fulfilled, goods are not exempted goods. [See *Union of India Vs. Ganesh Metal Processors Industries*¹]

13. In short, question before us is whether goods that are smuggled into the country can be read within the meaning of the expression 'imported goods' for the purpose of benefit of the exemption notification. We are of the view that 'smuggled goods' will not come within the definition of 'imported goods' for the purpose of the exemption notification, for the reason, the Act defines both the expressions looking at the different definitions given to the two classes of goods: imported and smuggled, and we are of the view that if the two were to be treated as the same, then there would be no need to have two different definitions.

14. In order to understand the true meaning of the term 'imported goods' in the exemption notification, the entire scheme of the Act requires to be taken note of. As noted above, 'imported goods' for the purpose of this Act is explained by a conjoint reading of Section 2(25), Section 11, Section 111 and Section 112. Reading these Sections together, it can be found that one of the primary purposes for prohibition of import referred to the latter is the prevention of smuggling [See section 11(2)(c)]. Further, in the light of the objects of the Act and the basic skeletal framework that has been enumerated above, it is clear that one of the principal functions of the Act is to curb the ills of smuggling on the economy. In the light of these findings, it would be antithetic to consider that 'smuggled goods' could be read within the definition of 'imported goods' for the purpose of the Act. In the same light, it would be contrary to the purpose of exemption notifications to accord the benefit meant for imported goods on smuggled goods.

15. The Tribunal has relied on the decision of this Court in the case of *Associated Cement Companies v. Commissioner of Customs*²] to extend the benefit of the exemption notification on the respondent-firm, despite the fact that the goods that were in question were not smuggled goods. In the case of *Associated Cement Companies Ltd.* (supra), the question that fell for consideration was whether customs duty was leviable on technical material supplied in the form of drawings, manuals and computer disc. etc. The further question was that if customs duty was leviable, how it was to be valued. While answering the issue, this Court has observed that Section 12 of the Act provides that the duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act. When the Customs Tariff Act itself provides that the import of drawings and designs under Heading No.49.06 is 'free', it must follow that these drawings and designs, though goods were not chargeable to duty. In our considered view, this decision would not assist the respondent herein. In the present case, as we have already stated that the notification exempts certain articles when imported into India from payment of duty under the Act. The import must be valid and in accordance with the provisions of the Act. In the present case, it is the finding of the Bombay High Court that the respondent-firm had imported diamonds of foreign origin without a valid licence and that finding has become final. Therefore, we agree with the learned senior counsel Sri R.P. Bhatt

on this aspect. The Tribunal, in our view, erred in holding that the situation was covered by the case of Associated Cements Company (supra.) decided by this Court.

16. The other two issues which were argued by the respondent and the revenue before the Tribunal and same was not answered since the Tribunal allowed the assessee's appeal by extending the benefit of the exemption notification to the respondent-firm. We are of the view that these issues now require to be considered by the Tribunal. Accordingly, while setting aside the order passed by the Tribunal, we remand the matter to the Tribunal to consider those issues after affording personal hearing to both the parties. The appeal is disposed of accordingly. No order as to costs.

¹2003 (151) ELT 21

²[2001 (128) ELT 21 (SC)]