Union Of India & Anr vs M/S. Jesus Sales Corporation on 26 March, 1996

Equivalent citations: 1996 AIR 1509, 1996 SCC (4) 69, AIR 1996 SUPREME COURT 1509, 1996 (4) SCC 69, 1996 AIR SCW 1575, (1996) 3 JT 597 (SC), 1996 (3) JT 597, 1996 (2) UJ (SC) 409, (1996) 3 SCR 894 (SC), (1996) 55 ECC 51, (1996) 83 ELT 486, (1996) 64 ECR 169, (1996) 63 DLT 398

Author: N.P Singh

Bench: N.P Singh, K Venkataswami

PETITIONER:
UNION OF INDIA & ANR.

Vs.

RESPONDENT:
M/S. JESUS SALES CORPORATION

DATE OF JUDGMENT: 26/03/1996

BENCH:
SINGH N.P. (J)
BENCH:
SINGH N.P. (J)
VENKATASWAMI K. (J)

CITATION:
1996 AIR 1509 1996 SCC (4) 69
JT 1996 (3) 597 1996 SCALE (3)103

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T N.P. SINGH J.

This appeal has been filed on behalf of the Union of India against the judgment of a Full Bench of Delhi High Court holding that an oral hearing had to be given to the respondent by the Appellate

authority before taking a decision under third proviso to sub-section (1) of Section 4-M of the Imports and Exports (Control) Act, 1947 (hereinafter referred to as the 'Act'). On the aforesaid finding the writ petition filed on behalf of the respondent was allowed and the order passed by the Appellate authority was quashed. A direction was given to afford an opportunity to the said respondent to be heard on the question as to whether the appeal filed on behalf of the respondent should be entertained without deposit of the penalty imposed.

The respondent obtained an advanced licence for import of brass scrap on certain conditions, under the Duty Exemption Scheme. The said licence was issued subject to the respondent's exporting 78 MT Brass Artware for approximate FOB value of Rs. 14,00,420/-. A show cause notice was issued to the respondent under Section 4-M of the said Act on basis of the report of investigation. Ultimately a penalty of Rs.6 lakhs was imposed against the said respondent. An appeal was filed on behalf of the respondent along with an application for dispensing with the pre- deposit. By a communication dated 18.2.1993 issued on behalf of the Appellate authority, the respondent was directed to deposit 25% of the penalty amount or bank guarantee for the same amount. The validity of this communication was questioned before the High Court saying that before rejecting the prayer made on behalf of the respondent to dispense with the whole amount of penalty an opportunity should have been given to the said respondent of being heard in terms of the proviso to Section 4-M of the Act. Section 4-M of the Act provides:

> "(1) Any person aggrieved by any decision or order made under this Act may prefer an appeal,-
>
> (a) where the decision or order has been made by the Chief Controller or Additional Chief Controller, to the Central Government;
>
> (b) where the decision or order has been made by any officer below the rank of the Additional Chief Controller, to the Chief Controller or where he so directs, to the Additional Chief Controller, within a period of forty-five days from the date on which the order is served on such person:
>
> Provided that the Appellate authority may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the aforesaid period of forty-five days, allow such appeal to be preferred within a further period of forty-five days:
>
> Provided further that in the case of an appeal against an order imposing a penalty, no such appeal shall be entertained unless the amount of the penalty has been deposited by the appellant:
>
> Provided also that, where the Appellate authority is of opinion that the deposit to be made will cause undue hardship to the appellant, it may, at its discretion, dispense with such deposit either unconditionally or subject to such conditions as it may impose.

(2) The Appellate authority may, after giving to the appellant a reasonable opportunity of being heard, if he so desires, and after making such further inquiries, if any, as it may consider necessary, pass such orders as it thinks fit, confirming, modifying or reversing the decision or order appealed against, or may send back the case, with such directions as it may think fit, for a fresh adjudication or decision, as the case may be, after taking additional evidence, if necessary:

Provided that an order enhancing or imposing a penalty or confiscating goods or materials of a greater value shall not be made under this section unless the appellant has had an opportunity of making a representation, and, if he so desires, of being heard in his defence."

In view of the aforesaid Section any person aggrieved by any decision or order made under the said Act may prefer an appeal before the authority prescribed therein and within the time fixed. The first proviso to sub-section (1) of Section 4-M vests power in the Appellate authority if it is satisfied that appellant was prevented by sufficient cause from preferring the appeal within the period prescribed to allow such appeal to be preferred within a further period of forty-five days. The second proviso prescribes a condition that an appeal against an order imposing a penalty shall not be entertained unless the amount of the-penalty has been deposited by the appellant. Having said so, the third proviso says that where the Appellate authority is of the opinion that the deposit to be made will cause undue hardship to the appellant, it may at its discretion dispense with such deposit either unconditionally or subject to such conditions as it may impose. Neither the first proviso which vests power in the Appellate authority for condonation of delay in filing the appeal nor the third proviso which vests power in the Appellate authority to dispense with the deposit of the amount of the penalty unconditionally or on some conditions say specifically that such orders have to be passed only after hearing the parties concerned. The Appellate authority in its discretion may condone the delay in filing the appeal. Same is the position so far the question of pre-deposit of the amount of penalty is concerned. The Appellate authority may dispense with such deposit in its discretion. The proviso relating to the condonation for delay in filing the appeal is more or less on the-pattern of Section 5 of the Limitation Act. Some how, a practice has grown throughout the country that before rejecting the prayer for condonation of delay in filing the appeal or application, opportunities are given to the appellants or petitioners, as the case may be, to be heard on the question whether such delay be condoned. Opportunities to be heard are also the contesting respondents in such appeals. In different statutes where power has been vested in the Appellate authority to condone the delay in filing such appeals or applications, there are no specific provisions in those statutes saying that before such delays are condoned the appellants or the applicants shall be heard, but on basis of practice which has grown during the years the courts and quasi-judicial authorities have been hearing the appellants and applicants before dismissing such appeals or applications as barred by limitations. It can be said that courts have read the requirements of hearing the

appellants or the applicants before dismissing their appeals or applications filed beyond time on principle of natural justice, although the concerned statute does not prescribe such requirement specifically.

Now the question is as to whether the same requirement has to be read as an implicit condition while construing the scope of third proviso to sub-section (1) to Section 4-M, i.e. the Appellate authority before refusing to entertain an appeal on the ground that no deposit of the amount of penalty imposed had been made, should hear the appellant on the question of dispensing with such deposit unconditionally or subject to conditions. It may be mentioned at the outset that the provisions requiring predispose of the amount of penalty or tax imposed before the appeals are heard are of two types. There are some statutory provisions which specifically prescribe and provide that before the appeals are heard, the amount of tax or penalty imposed have to be deposited. No discretion has been left by the statute in question in the Appellate authority to waive such deposit taking into consideration the hardships of the appellants concerned. One such provision was considered by this Court in the case of Shyam Kishore and Others v. Municipal Corporation of Delhi and Another, (1993) l SCC 22 under Delhi Municipal Corporation Act, 1957. In that Act, pre- deposit is a must before an appeal can be heard. This Court held that the Appellate authority has no jurisdiction to waive the condition or stay collection of tax pending disposal of the appeal. The grievance that the said provision in that event shall be deemed to be violative of Article 14 of the Constitution being harsh in nature was rejected. But there are statutes which vest power in the Appellate authorities to waive deposit unconditionally or with conditions. So far the present case with which we are concerned, as already pointed out above, the third proviso vests power in the Appellate authority to dispense with the amount of the penalty unconditionally or subject to conditions. As such it is different from the provision under the Delhi Municipal Corporation Act referred to above. Here the discretion has been vested specifically in the Appellate authority to dispense with such deposit either unconditionally or subject to such conditions as it may impose taking into consideration the undue hardship which such deposit may cause to the appellant.

The learned counsel appearing on behalf of the Union of India took a stand that when aforesaid proviso requires the Appellate authority to exercise discretion taking into consideration the facts and circumstances at each case, it does not flow from the said provision that before exercising such discretion, the Appellate authority should hear the appellant; this discretion can be exercised by the Appellate authority as the said authority may deem think proper. Now it is too late to urge that when a statute vests discretion in an authority to exercise a statutory power such authority can exercise the same in an unfettered manner. Whenever an unfettered discretion has been exercised, courts have refused to countenance the same. That is why from time to time courts have 'woven a network of restrictive principles' which the statutory authorities have to follow while exercising the discretion vested in them. This principle has been extended even when the authorities have to exercise

administrative discretions under certain situations. Another well settled principle which has emerged during the years that where a statute vests discretion in the authority to exercise a particular power, there is an implicit requirement that it shall be exercised in a reasonable and rational manner free from whims, vagaries and arbitrariness.

The High Court has primarily considered the question as to whether denying an opportunity to the appellant to be heard before his prayer to dispense with the deposit of the penalty is rejected, violates and contravenes the principles of natural justice. In that connection, several judgments of this Court have been referred. It need not be pointed out that under different situations and conditions the requirement of the compliance of the principle of natural justice vary. The courts cannot insist that under all circumstances and under different statutory provisions personal hearings have to be afforded to the persons concerned. If this principle of affording personal hearing is extended whenever statutory authorities are vested with the power to exercise discretion in connection with statutory appeals, it shall lead to chaotic conditions. Many statutory appeals and applications are disposed of by the competent authorities who have been vested with powers to dispose of the same. Such authorities which shall be deemed to be quasi-judicial authorities are expected to apply their judicial mind over the grievances made by the appellants or applicants concerned, but it cannot be held that before dismissing such appeals or applications in all events the quasi-judicial authorities must hear the appellants or the applicants, as the case may be. When principles of natural justice require an opportunity to be heard before an adverse order is passed on any appeal or application, it does not in all circumstances mean a personal hearing. The requirement is complied with by affording an opportunity to the person concerned to present his case before such quasi-judicial authority who is expected to apply his judicial mind to the issues involved. Of course, if in his own discretion if he requires the appellant or the applicant to be heard because of special facts and circumstances of the case, then certainly it is always open to such authority to decide the appeal or the application only after affording a personal hearing. But any order passed after taking into consideration the points raised in the appeal or the application shall not be held to be invalid merely on the ground that no personal hearing had been afforded. This is all the more important in the context of taxation and revenue matters. When an authority has determined a tax liability or has imposed a penalty, then the requirement that before the appeal is heard such tax or penalty should be deposited cannot be held to be unreasonable as already pointed out above. In the case of Shyam Kishore v. Municipal Corporation of Delhi (supra) it has been held by this Court that such requirement cannot be held to be harsh or violative of Article 14 of the Constitution so as to declare the requirement of pre-deposit itself as unconstitutional. In this background, it can be said that normal rule is that before filing the appeal or before the appeal is heard, the person concerned should deposit the amount which he has been directed to deposit as a tax or penalty. The non-deposit of such amount itself is an exception which has been incorporated in different Statutes including the

one with which are concerned. Second proviso to sub-section (1) of Section 4-M says in clear and unambiguous words that an appeal against an order imposing a penalty shall not be entertained unless the amount of the penalty has been deposited by the appellant. Thereafter the third proviso vests a discretion in such Appellate authority to dispense with such deposit unconditionally or subject to such conditions as it may impose in its discretion taking into consideration the undue hardship which it is likely to cause to the appellant. As such it can be said that the statutory requirement is that before an appeal is entertained, the amount of penalty has to be deposited by the appellant; an order dispensing with such deposit shall amount to an exception to the said requirement of deposit. In this background, it is difficult to hold that if the Appellate authority has rejected the prayer of the appellant to dispense with the deposit unconditionally or has dispensed with such deposit subject to some conditions without hearing the appellant, on perusal of the petition filed on behalf of the appellant for the said purpose, the order itself is vitiated and liable to be quashed being violative of principles of natural justice.

it shall not be out of place to mention that subsection (2) of Section 4-M provides specifically that appellant shall be given reasonable opportunity of being heard if he so desires before final order is passed on his appeal. That requirement according to us cannot be read impliedly as an implicit condition in the third proviso to sub-section (1) of Section 4-M. But it need not be impressed that when the Appellate authority has been vested with the discretion to dispense with such deposit unconditionally or on conditions, then it has to apply its mind on that question like a quasi-

judicial authority taking into consideration all the facts and circumstances of the case including the undue hardship which has been pointed out on behalf of the appellant. In that proviso the two expressions 'opinion' and 'descretion' both have been used. In view of the settled position that whenever a statutory authority has to form an opinion on a question, it does not mean that it has to be formed in a subjective or casual manner. That opinion must be formed objectively on relevant considerations. Same is the position in respect of the exercise of discretion. The framers of the Act require such Appellate authority to exercise its discretion in a reasonable and rational manner taking into consideration the relevant facts and circumstances of a particular appeal while considering the question as to whether the deposit of the amount of the penalty be dispensed with unconditionally or subject to the conditions.

In the present case on the application filed by the respondent, a direction was given to deposit only 25% of the amount of the penalty which had been imposed against the said respondent. According to us, the Appellate authority passed a reasonable order which should not have been held to be invalid by the High Court merely on the ' ground that before passing the said order the respondent was not given oral hearing, which amounted to violation of the principles of natural justice.

The appeal is accordingly allowed. The impugned order is set aside. In the facts and circumstances of the case, there shall be no orders as to cost.