Collector Of Customs, Calcutta vs East India Commercial Co. Ltd on 30 April, 1962

Equivalent citations: 1963 AIR 1124, 1963 SCR SUPL. (2) 563, AIR 1963 SUPREME COURT 1124

Author: K.N. Wanchoo

Bench: K.N. Wanchoo, Bhuvneshwar P. Sinha, P.B. Gajendragadkar, N. Rajagopala Ayyangar

PETITIONER:
COLLECTOR OF CUSTOMS, CALCUTTA

Vs.

RESPONDENT:
EAST INDIA COMMERCIAL CO. LTD.

DATE OF JUDGMENT:
30/04/1962

BENCH:
WANCHOO, K.N.
BENCH:
WANCHOO, K.N.
AIYYAR, T.L. VENKATARAMA
SINHA, BHUVNESHWAR P.(CJ)
GAJENDRAGADKAR, P.B.
AYYANGAR, N. RAJAGOPALA

CITATION:
1963 AIR 1124 1963 SCR Supl. (2) 563
CITATOR INFO :
R 1965 SC 458 (28)
D 1967 SC1244 (12)
D 1968 SC 231 (19)
RF 1974 SC1380 (21,30)
RF 1987 SC2111 (13)
R 1990 SC 10 (12)

ACT:
Sea Customs-Effect of confirmation of order in appeal-Order of Collector merged into that of Central Board of Revenue --Sea Customs Act, 1878 (8 of 1878).

HEADNOTE:

The respondent imported 2,000 drums of mineral oil and the appellant confiscated 50 drums and imposed a personal penalty. The appeal of the respondent was dismissed by the Central Board of Revenue. The respondent filed a petition under Art. 226 of the Constitution in the Calcutta High Court. A Full Bench of the High Court held that the High Court had no jurisdiction to issue a writ against the Central Board of Revenue in view of the decision in the case of Saka Venkata Subbha Rao. However, as the Central Board of Revenue had merely dismissed the appeal against the

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order of the appellant, the High Court further held that it had jurisdiction to pass an order against the appellant. The appellant came to this Court after obtaining a certificate.

Held that the appellant had merged into that of the Central Board of Revenue and hence no order could be issued against the appellant. It is only the order of the appellate authority which is operative after the appeal is disposed of. It is immaterial whether the appellate order reverses the original order, modifies it or confirms it. The appellate order of confirmation is as efficacious as an operative order as an appellate order of reversal or modification. As the appellate authority in this case was beyond the territorial jurisdiction of the High Court, it was not open to the High Court to issue a writ to the original authority which was within its jurisdiction.

Election Commission, India v. Saka Vankata Subba Rao, [1951] S. C. R. 1144, A. Thangal Kunju Mudatiar v. M. Venkitachalam Poiti, [1955] 2 S. C. R. 1196, Commissioner of Income-tax v. M/s. Amritlal Bhogilal & Co. [1959] S. C. R. 713 and Madan Gopal Rungta v. Secretary to the Government of Orissa, (1962) (Supp.) 3 S.C.R. followed.

Barkatali v. Custodian General of Evacuee Property, A. 1. R. 1954 Raj. 214, overruled.

Joginder Singh Waryam Singh v. Director, Rural Rehabilitation, Pepsu, Patiala, A. 1. R. 1955 Pepsu 91, Burhanpur National Textile Workers Union v. Labour Appellate Tribunal of India at Bombay, A. I. R. 1955 Nag. 148, and Azmat Ullah v. Custodian, Evacuee Property, A.I.R. 1955 All 435, approved.

State of U. P. v. Mohammed Nooh, [1958] S. C. R. 595, distinguished.

JUDGMENT:

CIVIL APPELLATE, JURISDICTION: Civil Appeal No. 383 of 1961. Appeal from the judgment and order dated July 21 1959, of the Special Bench of the Calcutta High Court in Matter No. 76 of 1952.

D. R. Prem and R. L. Dhebar, for the appellant and respondents NOS. 2 and 3.

S. P. Desai and B. P. Maheshwari, for respondent No. 1 1962. April 30. The Judgment of the Court was delivered by WANCHOO, T.-This ii an appeal on a certificate granted by the Calcutta High Court. The brief facts necessary for present purposes are these. The respondent had imported 2,000 drums of mineral oil. Out of this quantity, the appellant, the Collector of Customs, Calcutta, confiscated 50 drums by order dated September 20, 1950. He also imposed a personal penalty of Rs.61,000/on the respondent under the Sea Customs Act, No. 8 of 1878, (hereinafter referred to as the Act). The respondent appealed to the Central Board of Revenue under s. 188 of the Act, and this appeal was dismissed in April 1952. Thereupon the respondent filed a petition under Art. 226 of the Constitution in the High Court. We are in the present appeal not concerned with the merits of the case put forward by the respondent, for the matter has not yet been heard on the merits. When the petition came up before a learned Single Judge a question was raised as to the jurisdiction of the High Court to hear the petition in view of the decision of this Court in Election Commission India v. Saka Venkata Subba Rao.(1) As the learned Single Judge considered the point important, he referred the matter to a larger bench; and eventually the question was considered by a Full-Bench if the High Court. The Full-Bench addressed itself two questions in that connection, namely, (i) whether any writ could issue against the Central Board of Revenue which was a party to the writ petition and which was permanently located outside the jurisdiction of the High Court, and (ii) whether if no writ could issue, against the Central Board of Revenue any writ could be issued against the appellant, which was the original authority to pass the order under challenge, when the appellate (1) (1953) S.C.R. 1144, authority (namely, the Central Board of Revenue) had merely dismissed the appeal.

The Full-Bench held on the first question. that the High Court, had no jurisdiction to issue a writ against the Central Board of Revenue in view of the Precision in the case of Sake Venkata Subba Rao.(1). On the second question, it held that as the Central Board of Revenue had merely dis- missed the appeal against the order of the Collector of Customs Calcutta, the really operative order was the order of the appellant, which was located within the jurisdiction of the High Court, and therefore it had jurisdiction to pass an order against the Collector of Customs in spite of the fact that order had been taken in appeal (which was dismissed) to the Central Board of Revenue to which no writ, could be issued. The Full-Bench further directed that the petition would be placed before the learned Single Judge for disposal in the light of its decision or, the question of jurisdiction. Thereupon there was an application for a certificate to appeal to this Court, which was granted; and that in how the matter has come up before us.

The only question which 1ells for decision before us in the second question debated in the' High Court,. namely, whatever the High Court would have jurisdiction to issue a writ against the Collector of Customs Calcutta in spite of the fact that his order was taken in appeal to the Central Board of Revenue against which the High Court could not issue a writ and the appeal had been dismissed. There seems to have been a difference of opinion amongst the High Courts in this matter. The Rajasthan High Courts in Barkatali v. Custodian General of Evacuee Property (1) held that where the A.I.R. (1904) Raj. 214.

original authority passing the order was within the jurisdiction of the High Court but the appellate authority was not within such jurisdiction, the High Court would still have jurisdiction to issue a writ to the original authority, where the appellate authority had merely dismissed the appeal and the order of the original authority stood confirmed without any modification whatsoever. On the other hand, the PEPSU High Court in Joginder Singh Waryam Singh v. Director, Rural Rehabilitation. Pepsu Patiala, the Nagpur High Court in Burhanpur, National Textile Workers Union, v. Labour-Appellate Tribunal of India at Bombay (2) and the Allahabad High Court in Azmat Ullah, v. Custodian, Evacuee Property (3) held otherwise, taking the view that even Where the appeal was merely dismissed, the order of the original authority merged in the order of the appellate authority, and if the appellate authority was beyond the territorial jurisdiction of the High Court, no writ could issue even to the original authority. It may be mentioned that the Rajasthan High Court had occasion to reconsider the matter after the decision of this Court in A. Thangal Kunju Mudaliar v. M. Venkita-chalam Potti (4) and held that in view of that decision, itsearlier decision in Barkatali's case (5) was no longer good law. The High Court has however not noticed this later decision of the Rajasthan High Court to which the learned Chief Justice who was party to the earlier Rajasthan case was also a party. The main reason which impelled the High Courts, which held otherwise, was that the order of the original authority got merged in the order of the Appellate authority when the appeal was disposed of and therefore if the High Court had no territorial jurisdiction to issue a writ against the appellate authority it could not issue a writ (1) A.I.R. (1955) Pepsu 91 (3) A. I. R. (1955) All- 435.

(2) A. I. R. (1955) Nag. 148.

(4) 1955 2 S. C. R. 1196- (5) A.I.R. (1954) Raj. 214.

against the original authority, even though the appellate authority had merely dismissed the appeal without any modification of the order passed by the original authority. The question therefore turns on whether the order of the original authority becomes merged in the order of the appellate authority even where the appellate authority merely dismisses the appeal without any modification of the order of the original authority. It is obvious that when an appeal is made, the appellate authority can do one of three things, namely, (i) it may reverse the order under appeal,

(ii) it may modify that order, and (iii) it may merely dismiss the appeal and thus confirm the order without any modification. It is not disputed that in the first two cases where the order of the original authority is either reversed or modified it is the order of the appellate authority which is the operative order and if the High Court has no jurisdiction to issue a writ to the appellate authority it cannot issue a writ to the original authority. The question therefore is whether there is any difference between these two cases and the third case where the appellate authority dismisses the appeal and thus confirms the order of the original authority. It seems to us that on principle it is difficult to draw a distinction between the first tori kinds of orders passed by the appellate authority and the third kind of order passed by it. In all these three cases after the appellate authority has disposed of the appeal, the operative order is the order of the appellate authority whether it has reversed the original order or modified it or confirmed it. In law, the appellate order of confirmation is quite as efficacious as an operative order as an appellate order of reversal or modification.

Therefore, if the appellate authority is beyond the territorial jurisdiction of the High Court it seems difficult to bold even in a case where the appellate authority has confirmed the order of the original authority that the High Court can issue a writ to the original authority which may even have the effect of setting aside the order of the original authority when it cannot issue a writ to the appellate authority which has confirmed the order of the original authority. In effect, by issuing a writ to the original authority setting aside its order, the High Court would be interfering with the order of the appellate authority which had confirmed the order or the original authority even though it has DO territorial jurisdiction to issue any writ to the appellate authority. We therefore feel that on principle when once an order of an original authority is taken in appeal to the appellate authority which is located beyond the territorial jurisdiction of the High Court, it is the order after the appeal is disposed of; and as the High Court cannot issue a writ against the appellate authority for want of territorial jurisdiction it would not be open to it at issue a writ to the original authority which may be within its territorial jurisdiction once the appeal is disposed of, though it may be that the appellate authority has merely confirmed the order of the original authority and dismissed the appeal. It is this principle, viz., that the appellate order is the operative order after the appeal is disposed of, which is in our opinion the basis of the rule that the decree of the lower court merges in the decree of the appellate court, and on the same principle it would not be incorrect to say that the order of the original authority is merged in the order of the appellate authority whatsoever its decision-whether of reversal or modification or mere confirmation. This matter has been considered by this Court on a number of occasions after the decision in Saka Venkata Subba Rao's case.(1) (1) (1953) S.C.R. 1144.

In A. Thangal Kunju Mudaliar's case (1), though the point was not directly in issue in that case, the Court had occasion to consider the matter (see p. 1213) and it approved of the decisions of the PEPSU, Nagpur and Allahabad High Courts, (referred to above). Then in Commissioner of Income-tax v. Messrs. Amritlal Bhogilal and Company (2), a similar question arose as to the merging of an order of the income-tax officer into the order of the Appellate Assistant Commissioner passed in appeal in connection with the powers of the Commissioner of Income-tax in revision. Though in that case the order of registration by the Income-tax officer was held not to have merged in the order of the Assistant Commissioner on appeal in view of the special provisions of the Income tax Act, this Court observed as follows in that connection at p. 720 :-

> ",There can be no doubt that, if an appeal is provided against an order passed by a tribunal, the decision of the appellate authority is the operative decision in law. If the appellate authority modifies or reverses the decision of the tribunal, it is obvious that it is the appellate decision that is effective and can be enforced. In law the position would be just the same even if the appellate decision merely confirms the decision of the tribunal. As a result of the confirmation or affirmable of the decision of the tribunal by the appellate authority the original decision merges in the appellate decision and it is the appellate decision alone which subsists and is operative and capable of enforcement.
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> The matter was considered again by this Court, in Madan Gopal Rungta v. Secretary to the Government of Orissa (3) in connection with an order of the (1) (1955)2

S.C.R.1196. 12) (1959) S.C.R. 713, (3) (1962) (Supp.) 3 S.C.R. 966.

Central Government in revision under the Mineral Concession Rules, 1949, framed under the Mines and Minerals (Regulation and Development) Act, (No. 53 of 1948) and it was held that when the Central Government rejected the review. petition against the order of the State Government under the Mineral Concession Rules it was in effect rejecting the application of the appellant of that case for grant of the mining lease to him. The question of the original order with the appellate order was also considered in that case though it was pointed out in view of r.60 of the Mineral Concession Rules that it is the Central Government's order in review which is the effective and final order. Learned counsel for the respondent sought to distinguish Madan Gopal Rungla's case (1) on the ground that it was based mainly on an interpretation of r. 60 of the Mineral Concession Rules 1949, though he did not pursue this further when s. 188 of the Sea Customs Act was pointed out to him.

The main reliance however of the respondent both in the High Court and before us is on the decision in the State of Uttar Pradesh v. Mohmmed Nooh (2). That was a case where a public servant was dismissed on April 20, 1948 before the Constitu- tion had come into force. His appeal from the order of dismissal was dismissed in May 1949 which was also before the Constitution came into force. His revision against the order in the appeal was dismissed on April 22, 1950, when the Constitution had come into force, and the question that arose in that case was whether the dismissed public servant could take advantage of the provisions of the Constitution because the revisional order had been passed after the Constitution came into force. In that case, this Court certainly held that the order of dismissal passed on April 20, 1948 could not be said to have merged in the orders in appeal and in revision. It (1) (1962) (Supp.) 3 S.C.R. 906. (2) (1958) S.C.R. 595.

was pointed out that the order of dismissal was operative of its own strength as from April 20, 1948 and the public servant stood dismissed as from that date and therefore it was a case of dismissal before the Constitution came into force and the. public servant could not take advantage of the provisions of the Constitution in view of the fact that his dismissal had taken place before the Constitution had come into force. As was pointed out in Madan Gopal Rungta's, case(1) Mohammad Nooh's case (2) was a special case, which stands on its own facts. The question there was whether a writ under Art. 226 could be issued in respect of a dismissal which was effective from 1948. The relief that was being sought was against an order of dismissal which came into existence before the Constitution came into force and remained effective all along even after the dismissal of the appeal and the revision from that order. It was in those special circumstances that this Court held that the dismissal had taken place in 1948 and it could not be the subject-matter of consideration under Art.226 of the constitution, for that would be giving retrospective effect to the Article. The argument based on the principle of merger was repelled by this Court in that case on two grounds, namely, (i) that the principle of merger applicable to decrees of courts would not be applicable to departmental tribunals, and (ii) that the original order would be operative on its own strength and did not gain greater efficacy by the subsequent order of dismissal of the appeal or revision. in effect, this means that even if the principle of merger were applicable to an order of dismissed like the one in Mohammad Nooh's case, (2) the fact would still remain that the dismissal was before the Constitution came into force and therefore the person dismiss could not take advantage of the provisions of the Constitution, so (1) (1962)(Supp.)3 S.C.R.906.

(2) (1958) S.C.R. 595.

far as that dismissal was concerned. That case was not concerned with the territorial jurisdiction of the High Court where the original authority is within such territorial jurisdiction while the appellate authority is not and must therefore be confined to the special facts with which it was dealing. We have therefore no hesitation in holding consistently with the view taken by this Court in Mudaliar's case (1) as well as in Messrs. Amritlal Bhogilat's (2) that the order of the origin%] authority must be held to have merged in the order of the appellate authority in a case like the present and it is only the order of the appellate authority which is operative after the appeal is disposed of. Therefore, if the appellate authority is beyond the territorial jurisdiction of the High Court it would not be open to it to issue a writ to the original autbority which is within its jurisdiction so long as it can not issue a writ to the appellate authority. It is not in dispute in this case that no writ could be issued to the appellate authority and in the circumstances the High Court could issue no writ even to the original authority. We therefore allow the appeal, set aside the order of the High Court and dismiss the writ petition with costs. Appeal allowed.

(1) (1955) 2 S.C.R. 1196.

(2) (1959) S.C.R. 713.