

Navin Chemicals Mfg. And Trading Co. ... vs Collector Of Customs on 15 September, 1993

Equivalent citations: 1993ECR1(SC), 1993(68)ELT3(SC), JT1993(5)SC362, 1993(3)SCALE776, (1993)4SCC320, [1993]SUPP2SCR326, 1993 AIR SCW 3825, 1993 (4) SCC 320, (1993) 3 SCJ 395, (1993) 52 DLT 276, (1993) 49 ECR 1, (1993) 68 ELT 3, (1993) 5 JT 362 (SC)

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Bench: B.P. Jeevan Reddy, S.P. Bharucha

JUDGMENT

S.P. Bharucha, J.

1. This is an appeal by special leave against the judgment and order of the Customs, Excise & Gold Control Appellate Tribunal (hereinafter refereed to as 'CEGAT'), The order which granted special leave expressly confines it to the question whether a member of CEGAT sitting singly could in law have heard the appeal before it.

2. The appellant was granted an advance import licence for the import of crude emetine under a duty exemption scheme (C.E.E.D.) which required the appellant to export the goods after processing them. The goods that were imported by the appellants were found, on chemical analysis performed at the request of the Customs authorities, to contain emetine hydrochloride, moisture and other impurities. The Additional Collector of Customs held that the goods imported being emetine hydrochloride, the licence was not valid for the same. In as much as the importation had been made without the cover of the valid licence, an offence under Section 111(d) of the Customs Act, 1962 (hereinafter called 'the said Act') read with Section 3 of the Import and Export (Control) Act, 1947 was established against the appellant. He ordered thus:

Taking all the circumstances into account and in view of the fact that this is not an importation for individual sale and profit in India, but an importation under D.E.E.C. Scheme who importers are bound to re-export Emetine Hydrochloride, B.P. Grade, I take a lenient view and order that the goods in question shall be confiscated under Section 111(d) of the Customs Act, 1962 read with Section 5 of the Import and Export (Control) Act, 1947. I, however, allow under Section 125 of the Customs Act, 1962, an option to pay in lieu of such confiscation a fine of Rs. 10,000/- (Rupees ten thousand

only) and clear the goods into town.

There against the appellant preferred an appeal to CEGAT and it was listed for hearing before a member thereof, sitting singly. The appeal was rejected and the Additional Collector's order confirmed.

3. Learned Counsel for the appellant submitted that this was a case which involved the determination of a question having a relation to the rate of customs duty applicable to the said goods and that, therefore, it could not have been heard by a member of CEGAT sitting singly but ought to have been heard by a Special Bench thereof, in which behalf he drew our attention to the provisions of Section 129-C of the said Act. Learned Counsel for the respondent submitted, on the other hand, that no question having relation to the rate of customs duty had been determined by the order of the Additional Collector and that, therefore, it was not a matter that could only have been heard by a Special Bench of CEGAT. Since this was a case, in his submission, which fell within the ambit of Clause(c) of Sub-section 4 of Section 129-C it was, rightly, listed before and decided by a member of CEGAT sitting singly.

4. The relevant portions of Section 129-C need to be reproduced. "129-C. Procedure of Appellate Tribunal-

(1) The powers and functions of Appellate Tribunal may be exercised and discharged by Benches constituted by the President from amongst the members thereof.

(2) Subject to the provisions contained in Sub-sections (3) and (4) a Bench shall consist of one judicial member and one technical member.

(3) Every appeal against a decision or order relating, among other things, to the determination of any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment shall be heard by a Special Bench constituted by the President for hearing such appeals and such Bench shall consist of not less than two members and shall include at least one judicial member and one technical member.

(4) The President or any other member of the Appellate Tribunal authorised in this behalf by the President may, sitting singly, dispose of any case which has been allocated to the Bench of which he is member where-

(a) the value of the goods confiscated without option having been given to the owner of the goods to pay a fine in lieu of confiscation under Section 125; or

(b) in any disputed case, other than a case where the determination or any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment is in issue or is one of the points in issue, the difference in duty involved or the duty involved; or

(c) the amount of fine or penalty involved, does not exceed fifty thousand rupees.

5. Sub-section (1) of Section 129-C empowers the President of CEGAT to constitute Benches for the exercise of the powers and functions thereof. By virtue of Sub-section (2) a Bench shall consist of one Judicial Member and one Technical Member. Sub-section 3 is in the nature of an exception to Sub-section 2 and it provides that an appeal against a decision or order relating, among other things, to 'the determination of any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment' shall be 'heard by a Special Bench of not less than two members, of whom one should be a Judicial Member and one a Technical Member. (Before 1985 the requirement was that a Special Bench should consist of not less than three members). Sub-section 4 is also in the nature of an exception to Sub-section (2). It authorises the President or any member of CEGAT authorised in this behalf by the President to dispose of, sitting singly, cases of goods confiscated where no option is given to the owner to pay a fine in lieu of confiscation, where the value of goods does not exceed Rs. 50,000; cases where the difference in duty involved or the duty involved does not exceed Rs. 50,000/-, other than a case where the 'determination of any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment' is a point in issue; and cases where the amount of fine or penalty involved does not exceed Rs. 50,000/-.

6. It is, upon a plain reading of the section, clear that appeals against orders which involve 'determination of any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment' are specially treated and are required to be heard by a Special Bench. This is what Sub-section 3 of Section 129-C provides. Appeals in other matters are to be heard by a Bench consisting of one Judicial Member and one Technical Member, subject to the provisions of Sub-section (4). Sub-section (4) carves out an exception to the general provisions of Sub-section (2) and provides that a member of CEGAT sitting singly can hear appeals in the matters enumerated therein provided that they are not cases where the 'determination of any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment' is in question.

7. The controversy, therefore, relates to the meaning to be given to the expression 'determination of any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment'. It seems to us that the key lies in the words 'for purposes of assessment' therein. Where the appeal involves the determination of any question that has a relation to the rate of customs duty for the purposes of assessment that appeal must be heard by a Special Bench. Similarly, where the appeal involves the determination of any question that has a relation to the value of goods for the purposes of assessment, that appeal must be heard by a Special Bench. Cases that relate to the rate of customs duty for the purposes of assessment and which relate to the value of goods for the purposes of assessment are advised treated separately and placed before Special Benches for decision because they, more often than not, are of importance not only to the importers who are parties thereto but also to many other importers who import or propose to import the same or similar goods. Since the decisions of CEGAT in such matters would have wide application they are, by the terms of the statute, to be rendered by Special Benches. The phrase 'relation to' is, ordinarily, of wide import but, in the context of its use in the said expression in Section 129-C, it must be read

as meaning a direct and proximate relationship to the rate of duty and to the value of goods for the purposes of assessment.

8. Before we consider whether the case of the appellant fails within the said expression, we must note that Section 130, Sub-section (1) and Section 130-E, Clause (b) of the said Act also use the said expression and they refer respectively to the Statement of Case to the High Court on a reference by CEGAT and an appeal to the Supreme Court directly. Section 130(1) states that the Collector of Customs or the other party may require CEGAT to refer to the High Court any question of law arising out of an order under appeal before it provided it is not an order relating among other things to the 'determination of any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment'. Clause (b) of Section 130-E provides that an appeal shall lie to the Supreme Court from 'any order passed by the Appellate Tribunal relating, among other things, to the determination of any question having a relation to the rate, of duty of customs or to the value of goods for purposes of assessment'.

9. The importance of the present appeal lies not so much in deciding which appeals can be heard by a member of CEGAT sitting singly and which by a Special Bench thereof as in determining where a reference can be made by CEGAT to the High Court and in which cases an appeal against an order of CEGAT can be filed directly before the Supreme Court. Where an appeal lies to the Supreme Court, the necessity of the reference on a question of law to the High Court is obviated. An appeal to this Court is provided where, as aforementioned, the questions in issue, relating to the rates of duty or the value of goods for the purposes of assessment, have relevance not only for the parties there concerned but for other importers as well.

10. Section 129-D deals with the powers of the Central Board of Excise and Customs and the Collector of Customs to call for and examine the record of any proceedings before authorities subordinate thereto and examine the legality or propriety thereof and also to direct such authorities to file appeals. Sub-section 5 was added to Section 129-D by the Customs & Central Excise Laws Amendment Act, 1988 and it reads thus:

(5) The provisions of this section shall not apply to any decision or order in which the determination of any question having a relation to the rate of duty or to the value of goods for the purposes of assessment of any duty is in issue or is one of the points in issue.

Explanation - For the purposes of this sub-section, the determination of a rate of duty in relation to any goods or valuation of any goods or valuation of any goods for the purposes of assessment of duty includes the determination of a question.-

(a) relating to the rate of duty for the time being in force, whether under the Customs Tariff Act, 1975 (51 of 1975), or under any other Central Act providing for the levy and collection of any duty of customs, in relation to any goods on or after the 28th day of February, 1986; or

(b) relating to the value of goods for the purposes of assessment of any duty in cases where the assessment is made on or after the 28th day of February, 1986; or

(c) whether any goods fall under a particular heading or sub-heading of the First Schedule or the Second Schedule to the Customs Tariff Act, 1975 (51 of 1975), or that any goods are or not covered by a particular notification or order issued by the Central Government granting total or partial exemption from duty; or

(d) whether the value of any goods for the purposes of assessment of duty shall be enhanced or reduced by the addition or reduction of the amounts in respect of such matters as are specifically provided in this Act.

11. It will be seen that Sub-section 5 uses the said expression 'determination of any question having a relation to the rate of duty or to the value of goods for the purposes of assessment' and the Explanation thereto provides a definition of it 'for the purposes of this sub-section'. The Explanation says that the expression includes the determination of a question relating to the rate of duty; to the valuation of goods for purposes of assessment; to the classification of goods under the Tariff and whether or not they are covered by an exemption notification; and whether the value of goods for purposes/of assessment should be enhanced or reduced having regard to certain matters that the said Act provides for. Although this Explanation expressly confines the definition of the said expression to Sub-section 5 of Section 129-D, it is proper that the said expression used in the other parts of the said Act should be interpreted similarly. The statutory definition accords with the meaning we have, given to the said expression above. Questions relating to the rate of duty and to the value of goods for purposes of assessment are questions that squarely fall within the meaning of the said expression. A dispute as to the classification of goods and as to whether or not they are covered by an exemption notification relates directly and proximately to the rate of duty applicable thereto for purposes of assessment. Whether the value of goods for purposes of assessment is required to be increased or decreased is a question that relates directly and proximately to the value of goods for purposes of assessment. The statutory definition of the said expression indicates that it has to be read to limit its application to cases where, for the purposes of assessment, questions arise directly and proximately as to the rate of duty or the value of the goods.

12. This, then, is the test for the purposes of determining whether or not an appeal should be heard by a Special Bench of CEGAT, whether or not a reference by CEGAT lies to the High Court and whether or not an appeal lies directly to the Supreme Court from a decision of CEGAT : does the question that requires determination have a direct and proximate relation, for the purposes of assessment, to the rate of duty applicable to the goods or to the value of the goods.

13. The order of the Additional Collector under appeal before CEGAT in the present case did not have any direct or proximate relation, for the purposes of assessment, either to the rate of duty applicable to the said goods or to the value thereof. All that the Additional Collector's order did was to confiscate the said goods allowing to the appellant the option of redeeming them upon payment of fine of Rs. 10,000/-. That the appellant might avail of the option, pay the fine and clear the said goods, when questions as to the rate of duty and value for purposes of assessment might possibly

arise, is far too remote a contingency to satisfy the test that is laid down.

14. Strictly speaking, on the interpretation that we have placed upon the said expression, this appeal would not lie from the impugned order of CEGAT to the Supreme Court. But we do not propose to dismiss it on that ground. We dismiss it on the ground that the appellants were in error in contending that their appeal before CEGAT ought to have been heard by a Special Bench and could not have been heard and decided by a member of CEGAT, sitting singly.

15. The appeal is dismissed. There shall be no order as to costs.