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UNION OF INDIA

v.

T. R. MEHRA ETC. ETC.

(Civil Appeal No. 2036-2038 of 2011)

B

AUGUST 21, 2019

[A. M. KHANWILKAR and DINESH MAHESHWARI, JJ.]

Foreign Trade (Development and Regulation) Act, 1992: s.20 – Import of goods by Obron in August, 1997 – After coming into force of the Foreign Trade (Development and Regulation) Act, 1992, import of stated goods was no way prohibited under that Act – Action taken against the respondents founded on order dated 14.11.1986 passed by the Competent Authority in exercise of powers conferred by Clause 8(1) of the Imports (Control) Order, 1986 qua LD Textile – On appeal, held: The provision of the Act in no manner save the quasi-judicial order – Moreso, when it had the effect of continuing prohibition regarding the import of goods otherwise made free and could be imported under the 1992 Act – Any other interpretation would result in validating the quasi judicial order issued in exercise of powers derived from the Statutory Order which itself stands repealed alongwith the repealed Act – In other words, the quasi judicial order dated 14.11.1986 is repugnant to the legislative intent behind the 1992 Act, whereby, import in respect of the stated goods was made free and an open regime – A fortiori, no action against the respondents in relation to import of stated goods after coming into force of the 1992 Act with effect from 17.08.1992, in reference to the order dated 14.11.1986 could be resorted to in law – High Court dealt with this contention exhaustively and justly concluded that the show cause notice issued against the respondents on the basis of order passed by the Competent Authority dated 14.11.1986 cannot stand the test of judicial scrutiny – No interference is required – For, a quasi judicial order passed in exercise of powers under the Statutory Order which stands repealed along with the repealed Act, is not saved especially when it will be per se repugnant to 1992 Act and defeat the spirit of opening of the import regime for the stated goods.

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2036- A
2038 of 2011

From the Judgment and Order dated 12.04.2007 of the High Court of Bombay in Writ Petition No. 810, 812 and 814 of 2001

Arijit Prasad, Sr. Adv., Ms. Aruna Gupta and B. Krishna Prasad, B
Adv. for the Appellants.

V. Lakshmikumaran, Ms. Charanya Lakshmikumara, Aaditya Bhattacharya, Ms. Monica Kasturi, M. P. Devanath, Adv. for the Respondents.

The following Order of the Court was passed: C

ORDER

1. Heard learned counsel for the parties.

2. The action taken against the respondents was founded on order dated 14.11.1986 passed by the Competent Authority in exercise of powers conferred by Clause 8 (1) of the Imports (Control) Order, 1986 qua M/s. L.D. Textile Industries Ltd. D

3. It is not in dispute that the import of goods by Obron Impex (Pvt.) Ltd. was in August, 1997. After coming into force of the Foreign Trade (Development and Regulation) Act, 1992 (hereinafter referred to as the 'Act'), indisputably, import of stated goods is in no way prohibited under that Act. E

4. If so, the appellants must demonstrate that the Act provides for a savings clause to save the *quasi judicial* order passed by the Competent Authority in exercise of powers bestowed in it in terms of Imports (Control) Order, 1986. The provisions of the Act as rightly noted by the High Court, in no manner save the *quasi judicial* order. Moreso, when it had the effect of continuing prohibition regarding the import of goods otherwise made free and could be imported under the 1992 Act. Any other interpretation would result in validating the *quasi judicial* order issued in exercise of powers derived from the Statutory Order which itself stands repealed alongwith the repealed Act. In other words, the *quasi judicial* order dated 14.11.1986 is repugnant to the legislative intent behind the 1992 Act, whereby, import in respect of the stated goods has been made free and an open regime. F G

5. *A fortiori*, no action against the respondents in relation to import of stated goods after coming into force of the 1992 Act with effect from H

A 17.08.1992, in reference to the order dated 14.11.1986 could be resorted to in law. The High Court has dealt with this contention exhaustively and, in our opinion, justly concluded that the show cause notice issued against the respondents on the basis of order passed by the Competent Authority dated 14.11.1986 cannot stand the test of judicial scrutiny.

B 6. Learned counsel for the appellants invited our attention to Section 20 of the Foreign Trade (Development and Regulation) Act, 1992. The same read thus:-

C *“20. Repeal and savings.—(1) The Imports and Exports (Control) Act, 1947 (18 of 1947) and the Foreign Trade (Development and Regulation) Ordinance, 1992 (Ord. 11 of 1992) are hereby repealed.*

(2) The repeal of the Imports and Exports (Control) Act, 1947 (18 of 1947) shall, however, not affect,—

D *(a) the previous operation of the Act so repealed or anything duly done or suffered thereunder; or*

(b) any right, privilege, obligation or liability acquired, accrued or incurred under the Act so repealed; or

E *(c) any penalty, confiscation or punishment incurred in respect of any contravention under the Act so repealed; or*

(d) any proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, confiscation or punishment as aforesaid,

F *and any such proceeding or remedy may be instituted, continued or enforced, and any such penalty, confiscation or punishment may be imposed or made as if that Act had not been repealed.*

G *(3) Notwithstanding the repeal of the Foreign Trade (Development and Regulation) Ordinance, 1992 (Ord. 11 of 1992), anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act.”*

H 7. However, the appellants are not in a position to point out as to how the subject order dated 14.11.1986 would be covered by the savings

clause under sub-sections (2) or (3) of the Section 20 of the Act. Even A
the saving provision under the General Clauses Act will be of no avail to
the appellants for the reasons mentioned hitherto.

8. In view of the above, no interference is required. For, a *quasi* B
judicial order passed in exercise of powers under the Statutory Order
which stands repealed along with the repealed Act, is not saved especially
when it will be *per se* repugnant to 1992 Act and defeat the spirit of
opening of the import regime for the stated goods.

9. Hence, these appeals must fail and the same are dismissed
accordingly.

10. Pending applications, if any, stand disposed of. C