

# **Gulabdas & Company & Anr vs Assistant Collector Of Customs & Ors on 25 April, 1957**

**Equivalent citations: AIR 1957 SUPREME COURT 733**

**Author: S.K. Das**

**Bench: S.J. Imam, S.K. Das, P.G. Menon, A.K. Sarkar**

CASE NO.:

Writ Petition (civil) 234-245 of 1956

PETITIONER:

GULABDAS & COMPANY & ANR.

RESPONDENT:

ASSISTANT COLLECTOR OF CUSTOMS & ORS.

DATE OF JUDGMENT: 25/04/1957

BENCH:

S.R. DAS (CJ) & S.J. IMAM & S.K. DAS & P.G. MENON & A.K. SARKAR

JUDGMENT:

JUDGMENT 1957 AIR 733 The Judgment was delivered by : S. K. DAS S.K. DAS, J.- These are twelve petitions under Art. 32 of the Constitution. Messrs. Kanji Shavji Parekh are the petitioners in three of the petitions, numbered 235, 236 and 240. The petitioners of the remaining cases are nine other firms. It is stated that all these firms, including Messrs. Kanji Shavji Parekh are established importers holding quota rights for importing stationary articles and have their places of business in Calcutta.

2. These petitions have been heard together, as they raise identical questions. They have been argued together, and Mr. N. C. Chatterji appearing for all the petitioners has taken us in detail through the facts of petition No. 235 of 1956. He has stated that the facts of the other petitions are exactly similar in nature, with only minor differences in dates, names and other unimportant details which have no bearing on the questions at issue. We shall accordingly state the facts of Petition No. 235 of 1956 in detail, and we are relieved from the task of stating the facts of the other petitions.

3. The relevant are these, Messrs. Kanji Shavji Parekh is a registered partnership firm, having its principal place of business in Calcutta. The partners of the firm are citizens of India. The firm is an established importer of stationary articles and has quota rights for importing stationary items including goods known as "Artists' Materials" and described in Appendix 10 at pages 376 and 377 of the Import Trade Control Policy Book for the licensing period July to December 1954.

On 4th August 1954, the Joint Chief Controller of Imports and Exports gave a license to the said firm, hearing after called the petitioners, to import goods known as "Artists' Material", falling under serial No. 168 (C) of part IV of the Policy Statement for the period July to December, 1954. Item 168 of the said statement related to "articles made of paper and papier machie, stationery including drawing and copy books etc." Sub-item (c) related to " other articles"

under the same item.

A fuller description of "Artists' Materials" as given in Appendix XX referred to above. Item 11 of the said Appendix was 'Crayons'. The approximate value of the goods as mentioned in the licence was Rs. 2, 088 and the validity of the licence was for a period of twelve months from the date of issue. But before the issue of the said licence, the petitioners had in the middle of June 1954 arranged with Messrs. Crystal Company, local agents and representatives of Messrs. Lyra Lead Pencil Company, Nuremberg, West Germany, for the purchase of 'Lyra' brand crayons. The petitioners stated that the said crayons were coloured crayons in twelve assorted colours - 12 crayons to a box and 12 boxes to a carton. On 14th June 1954, the petitioners wrote to the Assistant Collector of Customs for Appraisement, Calcutta, enclosing a carton of 'Lyre' brand crayons and enquiring as to the proper customs classification of the said crayons.

On 3rd July 1954, a reply was given to the petitioners by the Assistant Collector of Customs for Appraisement, Calcutta, to the effect that 'Lyra' brand crayons were classifiable under item No. 45 (a) of the Indian Customs Tariff. It is worthy of note, however, that the letter contained a foot note which stated that the classification was provisional and was liable to revision in the light of examination of the goods at the time of importation.

After having obtained the licence on 4th August 1954, the petitioners placed an order through Messrs. Crystal Company for importing 486 dozen boxes of 'Lyra' brand coloured Crayons. The order was confirmed in September, 1954. The petitioners opened an irrevocable letter of credit in favour of the manufactures through a bank, and on or about 10th January 1955 the goods arrived from Hamburg in West Germany to the port of Calcutta in India.

The petitioners then field a Bill of Entry, through their clearing agents, under the provisions of the Sea Customs Act (Act VIII of 1878). On that Bill of Entry, an endorsement was made by the Assistant Collector of Customs which was to the following effect : -

"Collector's order in File S. 6-140/55A. Goods assessable under item 45 (4) ICT and accept the licence produced. Declare number of pieces and length of the pencil both in words and Figures."

The endorsement showed that the Assistant Collector of Customs instead of assessing duty under item 45 (a) was assessing duty under item 45 (4) of the Indian Customs Tariff. The petitioners felt aggrieved by this order, because the duty payable under item 45 (a) was 39 3/8 percent. ad valorem while the duty payable under item 45 (4) was "2 annas for every length of 7 1/2 inches or part thereof, or 66 2/3 percent. ad valorem, whichever was higher."

The petitioners then represented their case to two successive Collectors of Customs, and on 26th April 1955, the Assistant Collector of Customs wrote to the petitioners to the following effect :

"I am directed to advise that the decision on the merits of the assessment of these Lyra brand half-sized coloured pencils having been taken by Collector's predecessor and duly communicated to you by an endorsement on the reverse of the bills of entry in question, Collector does not see his way to interfere in the matter and that in case you feel aggrieved with the said decision, the proper course is to follow the appeal procedure prescribed under section 188 of the Sea Customs Act."

The petitioners then appealed to the Central Board of Revenue by means of a communication dated May 14/17, 1955. The Central Board of Revenue dismissed the appeal on 12th October 1955, by the following order :

"The goods have been correctly assessed to duty under item 45 (4), Indian Customs Tariff. The board, therefore, sees no. reason to interfere with the order passed by the Collector of Customs, Calcutta."

Thereafter, the petitioners filed the present writ application by which they challenge the validity of the orders of the Assistant Collector of Customs, the Collector of Customs and the Central Board of Revenue on grounds which we shall presently state. The petitioners pray for the issue of appropriate writs for quashing the said order and also for directing the Customs authorities to deliver the goods to the petitioners on payment of duty under item 45(a) of the Indian Customs Tariff.

4. These petitions have been contested on behalf of the respondents who are the Customs authorities concerned and the Union of India. The principal contention on their behalf is that these applications cannot be sustained under Art. 32 of the Constitution, because no. fundamental right conferred by Part III of the Constitution has been violated by the orders in question. Secondly, it is contended that the orders in question were properly and correctly passed by authorities competent to pass them, after fully hearing the petitioners.

5. We now proceed to state the grounds on which the orders in question have been impugned. Mr. N.C. Chatterji appearing for the petitioners, has urged four main grounds in support of these petitions. His first ground is that the order made by the Assistant Collector of Customs on the Bill of Entry was passed on the strength of another order made by the Collector in File No. S. 6-140/55A without hearing the petitioners; the Collector also passed his order in the said file without hearing the petitioners and therefore the orders were passed in violation of the principles of natural justice.

This is the first ground of attack. Secondly, learned counsel has referred us to the affidavit filed on behalf of the respondents wherein it was stated that 'Lyra' brand crayons were not crayons at all but were coloured pencils, and has argued that this assumption of the respondents is manifestly erroneous.

It is submitted by learned counsel that if 'Lyra' brand crayons are not crayons at all, then the licence which was granted to the petitioners on 4th August 1954 for importing crayons was not a valid licence for importing the goods in question; the Customs authorities however, accepted the licence as a good licence and yet proceeded on the erroneous assumption that 'Lyra' brand crayons were not crayons at all.

This, according to learned counsel for the petitioners, is a manifestly erroneous assumption. Thirdly, learned counsel has contended that the right of the petitioners under cls. (f) and (g) of Art. 19 (1) of the Constitution, namely to hold their property and to carry on a trade, has been violated by reason of the orders in question. Lastly, learned counsel has pointed out that in certain other cases, the Customs authorities had assessed duty on similar goods under item 45 (a) of the Indian Customs Tariff, and therefore they have meted out unequal treatment to the petitioners.

6. At first sight, the last two grounds stated above apparently seem to involve question of enforcement of fundamental rights, for which purpose the petitioners have the guaranteed right to move this court by appropriate proceedings under Art. 32 of the Constitution. On a closer examination, however, it will appear that there is really no question of the enforcement of a fundamental right in any of these twelve petitions.

What, after all, is the grievance of the petitioners? They do not challenge any of the provisions of the Indian Tariff Act, 1934 (XXXII of 1934) or any of the provisions of the Sea Customs Act, 1878 (VIII of 1878). It is for the Customs authorities to determine under the provisions of the said Acts what duty is payable in respect of certain imported articles. The Customs authorities came to a pursued decision, right or wrong, and the petitioners their remedy by way of an appeal to the Central Board of Revenue.

The Central Board of Revenue dismissed the appeal, Unless the provisions relating to the imposition of duty are challenged as unconstitutional or the orders in question are challenged as being in excess of the power given to the Customs authorities and therefore without jurisdiction, it is difficult to see how the question of any fundamental right under Art. 19 (1), cls. (f) and (g), of the Constitution can at all arise.

If the provision of law under which the impugned orders have been passed are good provisions and the orders passed are with jurisdiction, whether they be right or wrong on facts, there is really no question of the infraction of a fundamental right. If a particular decision is erroneous on facts or merits, the proper remedy is by way of an appeal.

If the petitioners were aggrieved by the order of the Central Board of Revenue, they had a further remedy by way of an application for revision to the Central Government. The petitioners did not

choose to do so nor do they challenge any of the provisions of law under which the impugned orders were made; nor is it contended that the orders were without jurisdiction. All that is really contended is that the orders are erroneous on merits. That surely does not give rise to the violation of any fundamental right under Art. 19 of the Constitution.

7. With regard to the argument as to unequal treatment, it is sufficient to refer to one of the paragraphs of the affidavit filed on behalf of the respondents. That paragraph states :

"I say that the contention of the petitioner is untenable inasmuch as the levy of customs duly on the coloured pencils as crayons was done in some cases merely through oversight, and when that was found out, the mistake was corrected inasmuch as in subsequent, imports the duty was levied under item 45 (4) of the Customs Tariff, and this has been regularly followed in cases of merchants who have imported these kinds of goods ..... I say that there are many other firms who have imported the coloured pencils and they have been assessed under item 45 (4) of the Customs Tariff, and therefore the petitioners are not entitled to make any grievance on that account."

This, in our opinion, completely dispose of the argument as to unequal treatment. It may be stated here that, prior to 1st March 1951, coloured and copying pencils' were included under the head 'stationery not otherwise specified' in item 45 (4) of the Indian Customs Tariff. By the Indian Tariff (Amendment) Act, 1951, (Act XIII of 1951) item 45 (a) was inserted and this specifically related to 'coloured and copying pencils'. The duty then imposed was protective duty of 37 1/3 per cent. ad valorem.

By the Indian Finance Act XIV of 1953, the duty was enhanced to 66 2/3 per cent. ad valorem. Then, in October, 1954, came the Indian Tariff (Second Amendment) Act, 1954, by which the duty imposed under item 45 (4) with regard to 'coloured and copying pencils' was a revenue duty of 'two annas for every length of 7 1/2 inches or part thereof or 66 2/3 per cent. ad valorem, whichever is higher.' Whatever difficulty there might have been at an earlier stage, there was really no. difficulty in assessing duty on coloured pencils since the amendment of 1951, which inserted items 45 (4) in the First schedule to the Indian Tariff Act, 1934 (XXXII of 1934).

8. The petitioners relied on the letter dated 3rd July 1954, in which the Assistant Collector of Customs said that 'Lyra' brand crayons were classifiable under item 45 (a). This letter, however, itself stated that the classification was provisional and liable to revision in the light of examination of the goods at the time of importation. Moreover, the tentative classification made by the Assistant Collector, of Customs was not binding on the Collector and we do not think that the petitioners can found any claim on the ground of estoppel.

In fairness to learned counsel for the petitioners we must add that no. such claim was made before us. Learned counsel for the petitioners referred us to certain observations in Chapter 1 of a handbook of rules and procedure, 1952, entitled Import Trade Control. The observations are these :

"The import policy in respect of different items is announced with reference to the serial numbers under each part of the Import Trade Control Schedule. It is therefore necessary for the intending importer to ascertain under what part and which serial number of the I.T.C. Schedule the article which he wishes to import falls. An alphabetical list of articles is included in Appendix 'X' to enable importers to ascertain readily the I.T.C. classification of any particular item. It will be noticed that in the I.T.C. Schedule (except in Part VI) against each serial number the corresponding Customs classification under the First Schedule to the Indian Tariff Act, 1934 has been quoted. This is intended to help importers in ascertaining the correct classification in doubtful cases by reference to the Customs classification with which as a rule they would already be familiar by virtue of their past imports. It is some what important for the importer to know the correct I.T.C classification for any item because only then can he ascertain the appropriate authority to whom he should apply for an import licence and also judge for himself whether or not a licence licence is likely to be granted to him."

We do not think that the aforesaid observations which relate to licensing policy have any bearing on the question at issue, namely, whether 'Lyra' brand crayons should be assessed under item 45(a) as stationery not otherwise specified or item 45(4), as coloured pencils.

9. For the reasons given above, we do not think that there is any substance in the contention urged on behalf of the petitioners that by the impugned orders there has been a violation of their fundamental right under Art. 19 or that there has been unequal treatment of the petitioners by the Customs authorities. On this short ground only the applications are liable to be dismissed.

10. With regard to the first two grounds urged on behalf of the petitioners it is abundantly clear that the petitioners have had a full hearing before two successive Collectors of Customs, Calcutta and their grievance as to the violation of the principles of natural justice is totally devoid of merit. From the affidavit filed on behalf of the respondents, it appears that between 19th January 1955, and 16th February 1955, the petitioners became aware of the decision of the Collector, through the Customs officers, that the assessment was made under item 45(4).

On 16th February 1955, the petitioners made a representation with regard to the distinction between 'crayons' and 'coloured pencils.' The representation was considered by the Collector of Customs. The petitioners were then given a personal hearing by the Collector on 26th February 1955, and the order of assessment was confirmed. On 6th April 1953, the petitioners asked for an interview with the successor in office of the previous Collector, and again the petitioners were heard on 12th April 1955.

Thereafter, on 26th April 1955, the petitioners were told that the order of assessment could not be revised and their proper remedy was to prefer an appeal to the Central Board of Revenue. The petitioners then preferred an appeal to the Central Board of Revenue. That appeal was also dismissed. In view of these facts and circumstances, it is idle to contend that there has been a violation of the principles of natural justice.

11. The contention that the impugned orders are manifestly erroneous, because 'crayons' have been treated as 'coloured pencils' is not a contention which can be gone into on an application under Art. 32 of the Constitution. It has no bearing on the question of the enforcement of a fundamental right, nor can the question be decided without first determining what constitutes the distinction between a 'coloured pencil' and as 'crayon' a distinction which must require an investigation into disputed facts and materials.

This was a matter for the Constitution authorities to decide, and it is obvious that this Court cannot, on an application under Art. 32 of the Constitution, embark on such an investigation.

12. We are therefore of the view that there is no merit in any of these twelve applications. The applications are accordingly dismissed with costs. As all the applications have been heard together there will be one set of hearing fee in favour of the respondents to be paid proportionately by the petitioners of each case.