V.V. Iyer Of Bombay vs Jasjit Singh, Collector Of Customs And ... on 22 September, 1972

Equivalent citations: AIR1973SC194, (1973)1SCC148

Bench: A.K. Mukherjea, A.N. Grover, K.K. Mathew

JUDGMENT

A.K. Mukherji, J.

1. This appeal with certificate is directed against a judgment dated 26/27 July 1965 of a Division Bench of the High Court of Bombay by which the appellant's appeal from a judgment of a Single Judge of that High Court had been dismissed. The short facts of the case are as follows:

> The appellant is the sole proprietor of a firm by the name of New India Corporation and carries on business of importing plantation and agricultural machinery, implements, accessories and spare parts of such machinery. The appellant is also the sole selling agent of a German firm called "Carl Platz". In October, 1956, on the strength of two import licences dated 9 February 1956 and 16 March 1956, the appellant imported from his principals the aforesaid firm of Carl Platz, certain parts of agricultural machinery known as Express Battery Sprayers. The relevant invoice is dated 28 October 1956 and the Bill of Lading is dated 10th November, 1956. The appellant filed his Bill of Entry before the Customs authorities on 3 January 1957. When the goods arrived at the Bombay Port in January, 1957 the Customs authorities, after examining certain samples, gave clearance in respect of the goods on 10 January 1957. The goods consisted on 28 crates and contained, according to the appellant, 220 pieces of spare parts for power driven agricultural machinery. The value declared was Rupees 37,943. Subsequently, it appears, the Customs authorities had some doubts as to whether the goods correctly answered the description of goods for which the appellant had been given an import licence and with the help of search warrants searched the appellant's business premises and seized 10 cases of Express Battery Sprayers, certain ball bearings and certain hose clips. By a memorandum dated 28 December 1957 the appellant was asked to show cause why penal action should not be taken against the appellant under Section 167, Clause (8) of the Sea Customs Act, 1878 read with Section 3(2) of the Imports and Exports (Control) Act, 1947. Under the same memorandum the appellant was also asked to show cause why penal action should not be taken against him under Section 167(39) of the Sea Customs Act, 1878 for taking out certain goods without making a due "entry" for them. The memorandum, therefore, contained two charges. We are in this appeal concerned mainly with the charge under Section 167(8) of the Sea Customs Act 1878.

The appellant, in due course showed cause against the said notice and asked for a personal hearing. He was given a personal hearing by the Assistant Collector of Customs on 21 July 1968.

2. It is better at this stage to set out what are the respective contentions of the appellant and the Customs authorities in this matter. The import licence that was granted to the appellant described the things covered by the licence as "spare parts in power-driven agricultural machinery (parts of sprayers)". Admittedly the import licence is one which relates to Item 74 (vi) of Part V of Schedule I to the Imports (Control) Order (1955) made under the Imports and Exports (Control) Act, 1947, The Schedule will hereafter be briefly referred to as the I.T.C Schedule. Item 74 (vi) of Part V of that Schedule reads as follows:

(vi) Parts of Power-driven agricultural machinery.

The goods that the appellant actually brought were certain liquid containers which were parts of sprayers. According to the appellant, the abovementioned Item 74(vi) permits all kinds of spare parts of power-driven agricultural machinery. "Spare parts" in this case were intended to be parts of certain sprayers fabricated by Carl Platz and generally described as Express Battery Sprayers. These sprayers, according to the appellant, function normally with the help of Power-driven pumps. Functionally, therefore, what the appellant imported were according to him, correctly described in the import licence. In other words, the appellant contends that the imports were in terms of the import licence. The Customs authorities on the other hand, say that the Sprayers built by Carl Platz are hand-operated sprayers and, therefore, fall within Item 74(x) of Part V of the I.T.C. Schedule which item relates to "sprayers (other than power-driven) and parts". As both Items 74(vi) and 74(x) with which we are concerned belong to Part V of the I.T.C. Schedule, we shall, for the sake of convenience, refrain hereafter from mentioning either the Schedule or the relevant part. According to the Customs authorities, though the appellant's import licence was one in respect of goods covered by Item 74(vi), he had, in fact, brought goods falling under Item 74(x) so that, in effect, the goods that the appellant had imported were not covered by any valid import licence.

3. The appellant, we are told, gave various demonstrations before the Customs authorities to show how the liquid containers in question fitted into the Express sprayers and how those sprayers were operated with power. The appellant admits that the spraying machines in question could also be operated by hand though, he says, the efficiency of the machines in that case would be reduced to a very great extent. Finally, on or about 25 May, 1960, one Jasjit Singh who, incidentally, was not the Collector who heard the appellant, passed an order by which he held that the appellant's firm had deliberately cleared "Express" battery sprayers in an unauthorised manner that is to say without a valid licence to cover their imports. Jasjit Singh also found that the appellant had taken out certain goods valued at Rupees 8,163/- without proper declaration or without filing an appropriate Bill of Entry and also without production of a valid licence. On these grounds the Collector found the appellant guilty under Section 167(8) of the Sea Customs Act and imposed a personal penalty of Rupees 80,000. The Collector, however, did not confiscate the goods. The appellant asked for a rehearing but no rehearing was given. Thereupon, instead of following the usual remedies under the Sea Customs Act the appellant filed a petition under Article 226 of the Constitution before the

Bombay High Court. The petition was heard and dismissed by a Single Judge of that High Court and, on appeal, the order of the Single Judge was confirmed by a Division Bench. The present appeal is directed against the order of the Division Bench.

4. There is very little controversy between the parties regarding the facts of this case. Both parties admit that the sprayers in question can be operated with the use of power as well as mechanically. Jasjit Singh, Collector of Customs has recorded the following findings regarding the nature of the imports in his order of 25 May, 1960:

> The Express Battery Sprayers (Containers) have no self-contained pumps- by which they could be charged. They can be charged by a hand filling or by a power pump. They are not specially designed for exclusive use with power pumps and hence cannot be classified under Section No. 74(vi) of the Schedule as parts of power-driven agricultural machinery. They are sprayers which would require an I.T.C. Licence under Section No. 74(x) Part V of the I.T.C. Schedule.

5. Mr. Tarkunde who appeared for the appellant before us admitted frankly that unless the Collector's decision is found to be perverse, neither the High Court nor this Court could interfere with that decision. He contended, however, that if in interpreting the I.T.C. Schedule for the purpose of finding out which was the proper item of the Schedule under which the imported goods would fall, the Collector is found to have made any mistake that would be open to correction by the High Court as well as by this Court He also argued that while the Collector's finding on facts about the results of the demonstration before him Cannot be legally questioned by the appellant, it is permissible for him to dispute the correctness of the statements made by the Collector in the last two sentences of the paragraph which we have set out above from the Collector's order.

6. On the assumption that the Collector's finding on fact cannot be assailed in a writ petition we must start from the proposition that the imports were of spare parts of spraying machines which were capable of being used both as a power-driven machinery as well as a hand-operated machinery. According to the Customs authorities since the machines in question are not specially designed for exclusive use of power pumps they cannot be described as power-driven agricultural machinery and therefore, the spare parts in question could not be classified under Item 74(vi). The only question that arises in these circumstances, can, in our opinion, be framed in the following manner. Does the fact that certain machinery which can be power-driven also admits of an alternative method of operation by mechanical force completely divests that machinery of its character qua 'power-driven machinery'? If a machinery is suitable for two alternative uses, is it wrong to describe the machinery as capable of only one of these alternative uses?

7. Mr. Tarkunde argued that if we have any doubts in our minds as to the answer to this question, in other words, if two alternative interpretations are possible of the exact scope and effect of the description of the items in the I.T.C. Schedule, we should favour that interpretation which would be beneficial to the subject. He relies for this purpose on an unreported decision given by two Judges of this Court in Jagannath Agarwalla v. B.N. Dutta, Civ. Appeal No. 801 of 1964, D/- 10-1-1967 (SC), where it was held:

> Assuming that there is a doubt in the construction of the licence, the appellant against whom the penal provisions of Section 167(8) of the Sea Customs Act, 1878 are sought to be enforced, is entitled to the benefit of the doubt.

8. Mr. G. Das appearing for the respondents, however, drew our attention to decisions of two larger Benches of this Court, according to which, if the view taken by the Customs authorities as to the scope and applicability of the different I.T.C Schedules be a reasonable view there should be no interference with the decision of the Customs authorities. Thus in the Collector of Customs, Madras v. K. Ganga Shetty AIR 1963 SC 319 the question arose whether certain goods described as "feed-oats" for feeding race-horses were goods that fell under Item 42 of Part IV of the Import Trade Control Schedule which permitted the import without licence of "fodder..." or under Item 32 which did not allow the import of grains without a licence. The Customs authorities held that the goods were 'grains' within the meaning of Item 32 and confiscated the goods and imposed a penalty on the importer in lieu of confiscation. The importer succeeded In the High Court in a writ petition for prohibiting the authorities from recovering the penalty imposed. This Court in a Bench consisting of five Judges considered this matter and held that the High Court had no jurisdiction to interfere with the decision of the Customs authorities. Rajagopala Ayyangar, J who delivered the judgment of the Court found that the decision of the Assistant Collector of Customs and of the Collector of Customs on appeal holding the oats in question to be 'grains' could not be characterised as perverse or mala fide. On these grounds his Lordship held that the learned Judges of the High Court had erred in interfering with the order of the Collector of Customs. Ayyangar, J. referring to an earlier decision of this Court in Venkatesvaran v. Wadhwani observed as follows:

> This Court proceeded on the basis that it is primarily for the Import Control authorities to determine the head of entry under which any particular commodity fell; but that if in doing so these authorities adopted a construction which no reasonable person could adopt i.e., if the construction was perverse then it was a case in which the Court was competent to interfere. In other words if there were two constructions which an entry could reasonably bear, and one of them which was in favour of Revenue was adopted, the Court has no jurisdiction to Interfere merely because the other interpretation favourable to the subject appeals to the Court as the better one to adopt.

9. In another decision namely Girdharilal Bansidhar v. Union of India Bench of this Court consisting of four Judges was called upon to decide whether the Collector of Customs had made a wrong decision in the matter of construing the scope of Entry 22 of Part I of the Import Trade Control Handbook and held that a court dealing with a petition under Article 226 does not sit in appeal over the decision of the Customs authorities and the correctness of the conclusion reached by those authorities on the application of the several items in the Handbook or in the Indian Tariff Act, is not a matter which falls within the writ jurisdiction of the High Court.

10. In view of these two decisions of this Court which are binding on us, we have no manner of doubt that the High Court of Bombay was quite right in accepting the conclusions and findings of the Customs authorities about the proper scope of Item 74(vi) of the I.T.C. Schedule. In our opinion,

there is nothing in the decision of the Collector which can warrant its condemnation as perverse or unreasonable. Even if it be assumed that because of the language used in the two items viz Items 74(vi) and 74(x) of the I.T.C Schedule, there is some room for confusion, it would not be competent for the High Court to interfere in a writ petition with the conclusion or finding-of the Collector of Customs regarding the scope and ambit of those items.

11. In the result this appeal fails. We dismiss the appeal and confirm the decision of the Bombay High Court. In the peculiar facts and circumstances of this case, however, we make no order as to costs.