

## **Collector Of Customs, Bombay vs M/S. Krishna Sales (P) Ltd. on 9 September, 1993**

**Equivalent citations: AIR 1994 SC 1239, 1994 (73) ELT 519 (SC), 1993 (4) SCALE 228, 1994 SUPP (3) SCC 73, AIR 1994 SUPREME COURT 1239, 1994 AIR SCW 547, 1994 (3) SCC (SUPP) 73, (1989) 41 ELT 374, 1994 SCC (SUPP) 3 73, (1994) 73 ELT 519**

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

### **JUDGMENT**

1. This appeal is preferred against the judgment of the Customs, Excise and Gold (Control). Appellate Tribunal, New Delhi. The respondent, M/s. Krishna Sales (P) Ltd., Delhi imported an item of machinery which according to it is a 'Bevel Gear Generator' - valued at a little above Rupees several lacs. The import was made in 1983 under O.G.L. The customs authorities raised an objection that the machinery imported by the respondent was not 'Bevel Gear Generator' but 'Bevel Gear Planer'. According to them, import of a different machinery than suited was violative of law. Adjudication proceedings were taken on the ground of miss declaration and the machinery confiscated. The respondent was given an option to pay a redemption fine of Rs. 70,000/- and penalty of Rs. 10,000/- and clear the goods. Respondents filed an appeal before the Tribunal. The appeal was allowed on March 2, 1985. The Tribunal was of the opinion that what was imported was Bevel Gear Generator only, as contended by the respondent. The Tribunal inter alia relied upon the opinion of one Sri M.K. Ghosh, dated November 22, 1983 - to whom the matter was referred by the customs authorities themselves. Sri Ghosh supported the respondent's case. It is this order which is questioned in this appeal.

2. So far as the merits of the appeal are concerned, the issue in controversy is not a question of law but one of fact - that too a technical matter. Whether the machinery imported is a Bevel Gear Generator or Bevel Gear Planer is purely a technical matter. Not only the Tribunal is composed of a technical member, it came to its conclusion on consideration of all factual and technical aspects including the opinion of Sri Ghosh, whose opinion was sought by the authorities themselves. We see no ground to take a different view. The appeal is accordingly dismissed.

3. Counsel for the respondent requested at the stage that the customs authorities may be directed to issue a detention certificate for the entire period during which the goods were detained till the date of issuance of the detention certificate which evidently includes the Period during which the proceedings were pending in this Court. For a proper appreciation of this request, a few facts need be stated.

4. The Tribunal allowed the appeal of the respondent company by virtue of which order the respondent was entitled to clear the said machinery without payment of any duty. But the

respondent required a detention certificate to enable him to clear the said machinery. Evidently, in view of this problem, this Court made the following interim order on October 6, 1987:

Having heard learned Counsel for the Collector of Customs, Bombay and M/s. Krishna Sales (P) Ltd., we direct that the application made by the latter for a detention certificate should not be rejected on the ground that the appeal is pending in this Court against the order of the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi.

5. The respondent says that when he applied for issuance of a detention certificate, no such certificate was issued. He says that the action of the authorities is relatable to and influenced by the public notice issued by the Collector of Customs, Bombay on July 25, 1985. The public notice says that the detention certificate for a period up to three months will be issued with the approval of and under the signature of the concerned Assistant Collector whereas a detention certificate for a period over three months will be issued with the approval of and under the signature of Deputy Collector. So far as the detention certificate for a period exceeding six months is concerned, it can issue only with the approval of and under the signature of the Collector. Para 4 of the public notice deals with issue of detention certificate to the parties succeeding in appeals. Having regard to the nature of its contents, it would be appropriate to quote the said paragraph in full:

Issue of detention certificates to the parties succeeding in appeals.

Detention Certificate, as a rule, will be issued by the concerned competent Customs Authority to the appellants succeeding in Appeals on receipt of the copies of such orders which the latter making formal application for issue of Detention Certificates.

However, in cases where the Custom House decides to go in second appeal before the Tribunal or the Supreme Court, the issue of Detention Certificate will be considered only after such second appeal is finally disposed of in favour of the parties.

6. According to the said para 4, the goods will not be released even where the party succeeds in cases where the customs authorities decide to go in appeal before the Tribunal or the Supreme Court. They will consider the issuance of such certificate only after the decision of the Tribunal or the Supreme Court, as the case may be. The learned Counsel for the respondent characterises the said direction as arbitrary and contrary to law. We see the force in his submission. If the authorities are of the opinion that the goods ought not to be released pending the appeal, the straight-forward course for them is to obtain an order of stay or other appropriate direction from the Tribunal or the Supreme Court, as the case may be. Without obtaining such an order they cannot refuse to implement the order under appeal. As is well-known, mere filing of an appeal does not operate as a stay or suspension of the order appealed against. Moreover, such detention is likely to create several complications relating to the demurrage charges besides the possible deterioration of the machinery and goods. We hope and trust that the Collector of Customs, Bombay shall appropriately revise the said public notice in the light of the observations made herein. If he does not do so, there is a likelihood of the customs authorities being themselves made liable for demurrage charges in

appropriate cases.

7. So far as this case is concerned, we direct that the detention certificate should be issued without reference to para 4 of the said public notice or any similar public notice. Since the respondents will not be absolved of the obligation to pay the demurrage charges altogether by reason of the detention certificate the Trustees of the Port of Bombay, (respondent No.2) are directed to consider sympathetically the request of the respondent No. 1 (M/s. Krishna Sales (P) Ltd., Delhi) for waiver of these demurrage charges.

8. There shall be no order as to costs.

9. I.A. No. 2 is taken on board and is dismissed.