

Supreme Court of India

Khalid Automobiles vs Union Of India (Uoi) And Ors. on 26 August, 1993

Equivalent citations: 1997 (96) ELT 509 SC, 1995 Supp (4) SCC 652

Bench: B J Reddy, S Bharucha

ORDER B.P. Jeevan Reddy and S.P. Bharucha, JJ.

1. These two appeals are preferred against the judgment and orders of the Collector of Customs and Central Excise, Cochin dated 29-3-1982 confiscating the goods concerned herein and at the same time providing an option to the appellant to redeem them on payment of the specified fine. It is necessary to state a few facts for a proper appreciation of the question arising herein.

2. The petitioner is a manufacturer of footwear. He says, he entered into a contract with a foreign supplier in the year 1979 for a supply of 28,500 dozen pairs of soles. According to him, the first consignment arrived at the port of Cochin when objection was raised by Customs Authorities that the goods imported by the petitioner were not soles but complete footwear. Accordingly, they confiscated the goods. The matter ultimately reached the Central Board of Customs and Excise by way of an appeal which was disposed of on 5-4-1980. The Central Board held that the goods imported by the appellant cannot be described as footwear though they are in finished condition. Accordingly, the appeal was allowed. The Government of India sought to revise the order of the Central Board in exercise of its power of revision suo motu. It issued a notice to the appellant proposing to do so.

3. Meanwhile, a second consignment arrived at the port of Cochin on 6-6-1981. With respect to the said consignment, the Customs Authorities raised the same objection again. They issued a notice on 6-6-1981 calling upon the appellant to show cause why the goods be not confiscated under the relevant provisions of the Customs Act. At that stage, the appellant approached the Delhi High Court by way of civil writ petition being CWP No. 2486 of 1981. In this writ petition, the appellant questioned the notice issued by the Government of India proposing to revise the order of the Central Board dated 5-4-1980 suo motu as well as the show cause notice dated 6-6-1981 issued by the Collector of Customs. By his judgment and order dated 16-3-1982, a learned Single Judge of the Delhi High Court quashed the notice given by the Government of India proposing the revision of the Central Board's order on the ground that it was barred by limitation. But so far as the show cause notice dated 6-6-1981 is concerned, the High Court was of the opinion that it is open to the Collector to come to his own conclusion on the merits of the case and hence, there was no occasion for quashing the show cause notice. Accordingly, the petitioner appeared before the Collector and brought to its notice the order of the Central Board dated 5-4-1980 wherein, according to the appellant, similar goods were held to be covered by the Exemption Notification No. 29 of 1979, dated 10-2-1979. The Collector of Customs, however, did not agree with the appellant. He held that the goods in question are fully finished goods identifiable as chap-pals. He observed that no expertise is required to insert the straps into them to make them suitable for wearing by human beings. He held that consumer goods are covered by Serial No. 667 of Appendix 3 and Serial No. 96 of Appendix 4 of April-March, 1979 policy and hence, not covered under Open General Licence (OGL). So far as the order of the Central Board dated 5-4-1980 is concerned, he observed that the said order is confined to the consignment which was the subject-matter of consideration by the

Board and that it does not apply to other consignments. The Collector observed further that in any event the Board's order is under review in pursuance of the show cause notice issued by the Central Government.

4. Against the aforesaid orders of the Collector, the appellant has approached this Court directly under Article 136 of the Constitution. So far as the proposition canvassed by the learned Counsel for the appellant before us, viz., that the Collector was bound by the judicial order made by the Central Board of Customs and Excise, is concerned, there can hardly be any dispute about its correctness. If the goods which were considered in the order dated 5-4-1980 made by the Central Board and the goods which are the subject-matter of the appeal are identical, there is no doubt that the Collector was bound to follow the orders of the Board - unless, of course, there was an order of a higher authority or of this Court or of the High Court having jurisdiction over the territory wherein the goods were seized, to the contrary. So far as the Collector is concerned, the order of the Board was binding upon him, provided the goods were identical. Indeed, the Board's decision was in the case of the appellant himself. We do not, of course, wish to express any opinion whether the goods concerned in the order of the Central Board dated 5-4-1980 and the goods concerned herein are identical or not. That is a matter for the Collector or the appropriate authorities to decide.

5. In the circumstances, we allow these appeals and remit the matter back to the Appellate Collector for disposing of the same in accordance with law and in the light of the observation made hereinabove. There shall be no order as to costs.

6. The learned Counsel for the Revenue expressed an apprehension that inasmuch as the appellant has obtained the goods in pursuance of the provision for redemption provided in the order of the Collector, the goods are not now available for confiscation and that there may be an objection to the validity of proceedings before the Appellate Collector. We do not think, there is any ground for such apprehension inasmuch as the appellant having himself chosen to take advantage of the option provided in the order while simultaneously questioning the order of confiscation, cannot turn round and question the validity of the proceedings before the Appellate Collector. It is made clear that the appellant shall not be entitled to raise any such objection.