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Krishan Kumar Bangur Vs. Director General of Foreign Trade

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Court : Delhi

Decided On : Apr-17-2006

Reported in : [2006]133CompCas83(Delhi); 2006(88)DRJ680; [2006]72SCL334(Delhi)

Judge : Vikramajit Sen, J.

Acts : Foreign Trade (Development and Regulation) Act, 1992 - Sections 8, 11, 13, 14 and 15; Customs Act - Sections 5

Appeal No. : CW No. 11125/2005

Appellant : Krishan Kumar Bangur

Respondent : Director General of Foreign Trade

Advocate for Def. : Ashok Bhasin, Adv. for Union of India

Advocate for Pet/Ap. : P.P. Tripathi, Sr. Adv.,; Ajay Bhargava and; Ranjan Das Gup

Judgement :
ORDER

1. The appeal is dismissed.

2. In addition to the penalty imposed by the Jt. DGFT, a penalty of Rs.10,000/- on each Directors of the company is also imposed.

3. The Jt. DGFT, Kolkata to initiate recovery proceedings against the company and all Directors.

(May D. Kem)

Addl. Director General

of Foreign Trade

10. It is well-settled that a decision has to be self-contained. It cannot be added to or improved upon by learned Counsel for the Respondent. It is also manifest that the Order merely recites the ipse dixit that the Director of a Company is responsible for completing the export obligations.

11. If authority is required for the first proposition it can be found in the celebrated decision on Mohinder Singh Gill v. The Chief Election Commissioner, New Delhi : [1978]2SCR272 , paragraph 8 of which reads as follows:

8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in Gordhandas Bhanji : [1952]1SCR135 (at p. 18):

Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of Explanationns subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself. Orders are not like old wine becoming better as they grow older.

In similar vein, in Babu Verghese v. Bar Council of Kerala : [1999]1SCR1121 , the Apex Court was called upon to consider a case under the Advocates Act. While doing so it applied the same principles earlier enunciated in Taylor v. Taylor (1875) 1 Ch D 426 and in Nazir Ahmad v. King Emperor . The Apex Court observed as follows:It is the basic principles of law long settled that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all. The origin of this rule traceable to the decision in Taylor v. Taylor which was followed by Lord Roche in Nazir Ahmad v. King Emperor.

12. Learned counsel for the Petitioner has drawn my attention to the decision of the Division Bench in Santanu Ray v. Union of India : 1988(38)ELT264(Del) . After taking note of the legal principle that any Director, who is a party to a fraud or the commission of any tort, is personally liable, the Bench held, in the circumstances of that case, that after the veil of the corporate entity is lifted, the adjudicating authorities will determine as to which of the Directors is concerned with the evasion of the excise duty by reason of fraud, collusion or willful mis-statement or suppression of facts, or contravention of the provisions of the Act and the Rules made there under. So far as individual liability of a director to the payment of excise duty and penalty is concerned, no liability can be fastened on him unless the department is able to show as to how and to what extent a particular Director is liable. The Respondents have not taken the trouble to consider and comply with these legal mandates and prerequisites.

13. In the Counter Affidavit reliance has been placed by the Respondents on Section 5 of the Companies Act, 1956 which defines the phrase officer who is in default. The reliance is wholly misplaced. The Section clarifies that for the purpose of any provision in that Act, the officer who is in default would include several persons including a Whole Time Director. In any event Section 5 is not applicable as it deals with defaults under the Companies Act and not in any other statute. In view of the stand taken by the Petitioner that he was not a Whole Time Director this point ought to have been specifically dealt with by the Respondents. Mr. Bhasin, learned Counsel for the respondent contends that no proof was tendered to the effect that the Petitioner was not a Whole Time Director. On a perusal of the Order in original as well as the Appellate Order I fail to find a specific finding to the effect that the Petitioner was a Whole Time Director. This finding was essential. The Respondents would at least have held that in the absence of any proof, an

adverse presumption should be drawn.

14. In order to sustain the imposition of a punishment on an individual Director it was incumbent on the Respondents to allege and assert the existence of a duty or obligation cast on one or all the Directors of the defaulting Company and the contumacious failure to fulfill it. The Show Cause Notice does not mention the grounds on which individual liability is sought to be fastened on the Director. Neither of the Orders, that is, the Order in Original or the Appellate Order, disclose reasons which have persuaded those Authorities to come to the conclusion that the Petitioner had assumed an obligation or duty in ensuring that exports corresponding to four times the CIF value would be undertaken within the prescribed period. To assume or foist such a liability on the Directors would run counter to the basic tenets of Company law.

15. In these circumstances so far as impugned Order dated 19.5.2005 is concerned it must be quashed. Mr. Bhasin has valiantly contended that this Order should apply only to the Petitioner. However, he is unable to make a statement on behalf of the Respondents that the Order viz.-a-viz. the Petitioner may be set aside. thereforee, whatever advantage of this Judgment can be taken by persons similarly placed as the Petitioner, would follow in the ordinary course.

16. The impugned Order is set aside.

17. Parties to bear their respective costs.

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