Union of India (Uoi) Vs. Sigma Electronics

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Court : Kolkata

Decided On : Jun-21-1996

Reported in : 1996(87)ELT26(Cal)

Judge : Umesh Chandra Banerjee and ;Ronojit Kumar Mitra, JJ.

Acts : Customs Act, 1962 - Sections 2(39), 18, 19, 108, 110, 111 and 113; ;Code of Civil Procedure (CPC) , 1908 - Section 132; ;Indian Penal Code (IPC), 1860 - Sections 193 and 228; ;Constitution of India - Article 226

Appeal No. : G.A. No. 1083 of 1996 A.P.O./T No. 152 and W.P. No. 774 of 1996

Appellant : Union of India (Uoi)

Respondent : Sigma Electronics

Judgement :

Umesh Chandra Banerjee, J.

1. The remedy available under Article 226 of the Constitution by way of issuance of a high prerogative writ or writs is extraordinary in nature and is wholly discretionary though, however, there cannot possibly be any manner of doubt that exercise of power by the High Court is of widest possible amplitude but that by itself, however, does not clothe the Writ Court to intervene or interfere without there being any infringement of a right - there must be some breach of a right if not

the legal right only and the law is well-settled on this score and as such I do not wish to dilate much in regard thereto.

2. Before adverting to the rival contentions as raised in the matter certain basic principles of law governing the jurisdiction of the Writ Court ought to be noted at this juncture. The most accepted methodology of all governmental actions is fair play and fair treatment and in the event of there being any departure therefrom, the jurisdiction of the Writ Court can be invoked and it would then be a plain exercise of judicial power to grant relief to a person who is seeking justice against an unfair dealing or an unfair treatment or against an administrative ipse dixit.

3. The Supreme Court of New South Wales in the case of Asmond v. Public Service Board of New South Wales and Anr. reported in 1985 LR (Commonwealth) 1041 after noticing the American and English Law observed that fairness is articulated in terms of inherent necessities of the proper operation of judicial process. The general duty of fairness as regards administrative action has also been accepted as a guiding principle by Meggary, J. in the case of Bates v. Lord Hailsham [1972 (1) All E.R. 1201].

4. Having discussed the law on this score as above, a brief reference to the factual aspect, at this juncture would be appropriate.

5. The factual score depicts that the Directorate of Revenue Intelligence working on a tip-off intercepted consignments of accessories viz., CAT Convertors, Satellite T.V. Receivers, Low Noise Block Down Convertors, Feed-Horn and N-Band Antennae at the Port of Calcutta in December, 1995. Be it noted that all these consignments were imported from Hong Kong by a Delhi based importer named Gurmit Sehgal, but subsequently the Shipping documents were changed in the name of Sigma Electronics. The intereception of the goods by the Revenue Intelligence was had by reason of Gross under-valuation and consequent evasion of duty to the extent of Rs. 18,86,701.00 P.

6. The factual score depicts that on arrival of above-noted consignments at the Port of Calcutta, the Deputy Commissioner of Customs allowed the goods to be cleared on provisional assessment basis but it is at that juncture however that the

Directorate of Revenue Intelligence issued a notice dated 28th March, 1996, requiring the attendance of the Proprietor of . Sigma Electronics and production of copies of Bills of Entry and Shipping document in regard to import of LNB and Feed-Horn. It is placed on record that in terms of notice, as above, the Proprietor of . Sigma Electronics did appear before the concerned officer on the date and time appointed and it is on that date again a further notice was issued requiring production of various other documents as detailed on the reverse of the notice concerning the items of goods said to have been imported into this country.

7. The records depict further that shortly thereafter a writ petition was moved before the learned Single Judge and without there being any affidavit on record the Learned Judge passed an order of release of the consignments in favour of the Petitioners against the security of Rs. 5,00,000/- by way of a Bank Guarantee. For convenience sake relevant extracts of the Order of the learned Single Judge is set out hereinbelow :

'It appears from the relevant summons dated 20-3-1996, issued under Section 108 of the Customs Act (not Section 110), being Annexure 'P-5 and P-6' to the writ application, that the same had been issued in terms thereof by the concerned authorities for making enquiries 'in connection with the import' of the relevant goods clearly suggesting thereby that the enquiry was not being made in connection with the 'smuggling of goods', penned through and scored out therein. That being so, the aforesaid two relevant summons, purportedly issued under Section 108 of the Customs Act, do not, prima-facie, seem to be according to law.'

8. That being so and in view of the fact that an order for release of the goods in question had already been passed by the Respondent No. 4 on provisional assessment, as appearing from the relevant two Bills of Entry Home Consumption, being Annexure 'P-4' collectively, which does not appear to have been assailed as yet, let there be an interim order restraining the concerned respondents from giving effect to the relevant Summons dated 20-3-1996 until further orders. Let the goods in question be also released in favour of the petitioners, who are stated to have already complied with order passed by the respondent No. 4 in connection therewith, on their furnishing Bank Guarantees for a further sum of Rs 5,00,000/-

only in favour of the Respondent No. 4 within two weeks from date, which shall be renewed from time to time. The goods in question shall be released by the concerned Respondents within three days from the date of furnishing Bank Guarantee in terms of this order.

9. This order shall not, however, debar the Authorities concerned from proceeding according to law, if they are so advised.

10. A prayer for stay of the operation of the order is made by the learned Advocate for the Respondents, but the same is refused for the reasons indicated above.

11. It is this order which is under challenge before this Court. The Appellant being the Revenue Intelligence strenuously contended that sanction to release of the goods is wholly unwarranted in the contextual facts of the matter in issue, more so by reason of the fact that an enquiry is pending in regard to the goods in question. In any event it has been contended by Mr. Basu appearing in support of the appeal that the quantum of Bank Guarantee as fixed by the learned Trial Judge was wholly unwarranted since the total revenue loss would exceed to Rs. 18,00,000/- and as such furnishing of Bank Guarantee to the extent of Rs. 5,00,000/- was unjust. The writ petitioner on the other hand strongly contended that the respondent being creatures of statute cannot but act in accordance with the Provisions of Law and not de-hors the same. Reliance was placed on Section 108 of the Act wherein the authority to investigate pertains to smuggling of goods and it is on this count that Mr. Rawat appearing for the writ petitioner contended that admittedly in the contextual facts question of invocation of Section 108 of the Customs Act does not and cannot arise by reason of the specific assertion in the notice by the Revenue Intelligence. Be it noted that the words 'smuggling' has been penned through in the impugned notice.

12. For convenience sake Section 108 is set out hereinbelow :

' 108. Power to summon person to give evidence and produce documents.

(1) Any gazetted officer of customs shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a

document or any other thing in any inquiry which such officer is making in connection with the smuggling of any goods.

(2) A summons to produce documents or other things may be for the production of certain specified documents or things or for the production of all documents or things of a certain description in the possession or under the control of the person summoned.

(3) All persons so summond shall be bound to attend either in person or by an authorised agent, as such officer may direct; and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements-and produce such documents and other things as may be required:

Provided that the exemption under Section 132 of the Code of Civil Procedure, 1908 (5 of 1908) shall be applicable to any requisition for attendance under this section.

(4) Every such inquiry as aforesaid shall be deemed to be a judicial proceeding within the meaning of Section 193 and Section 228 of the Indian Penal Code (45 of 1860).'

13. Be it noted that it has been the specific case of the Appellant herein that the goods have not been properly imported to this country. The Appellant contended that preliminary enquiry revealed that the said consignment was imported without import licence since the goods are accessories for Colour Television and no import is permitted without there being a valid import licence. In any event the Appellant contended that the said items were found to be grossly under-invoiced as noted above.

14. It is on this factual backdrop that the contentions of the parties in regard to the issuance of notice under Section 108 of the Act shall have to be considered. Admittedly Section 108 can be invoked by a Customs Officer making an enquiry of smuggling of goods. In accordance with the normal rule of construction viz. when the Legislature uses a particular word and in the event of a meaning attributed to

the word in the definition Section of the statute, then and in that event that particular meaning shall have to be attributed to the word used in the body of the Section. The word 'smuggling' has been defined under Section 2(39) of the Act which provides that smuggling in relation to any goods, means any act or omission which will render such goods liable to confiscation under Section 111 or Section 113. In the facts of the matter under consideration question of taking recourse to Section 113 does not and cannot arise since the same deals with exportation of goods. Therefore, in order to give a proper meaning to the word 'smuggling' in the contextual facts one shall have to take recourse to Section 111 which provides confiscation of improperly imported goods. Section 111(f) provides such a confiscation in the event of there being any dutiable or prohibited goods brought from a place outside India and required to be mentioned in the import manifesto or import report, which, however, admittedly not so mentioned in the contextual facts. As a matter of fact no import manifesto has been filed with the appropriate authority or at least not produced either before the learned Trial Judge or before us during the course of hearing of this matter. Section 111(m) further provides that goods brought from a place outside India shall be liable to be confiscation if the goods do not correspond in respect of value or in any other particular with the entry made under the Act of 1962. Admittedly no import licence has been produced before the Customs Authorities and the goods as noted above, were cleared on provisional assessment basis by the Officers of the Customs but subsequently intercepted by the Revenue Intelligence and the latter wanted to make certain enquiry in regard to the importation of the concerned goods. The notification authorising the Directorate of Revenue Intelligence to exercise the powers of the Customs Officers does not stand to any controversy from the Respondent's side as well. The situation therefore turns out to be that the Officers of the Directorate of Revenue Intelligence wanted to make certain enquiry in regard to certain importation of goods for which admittedly no import licence was produced and which stands released by the Customs Officer on a provisional assessment basis.

15. The issue therefore arises as to whether Section 108 can be taken recourse to while making an enquiry in regard to such an importation. Be it noted that there is no proceeding directed against any person at this stage neither there is any

proposal for any penal step but only an enquiry pertaining to importation of certain goods for which admittedly no import licence was produced. Having due regard to the language of Section 108 read with Section 2(39) and Section 111(f) and (m) of the Customs Act, in my view, question of taking any exception at this stage does not and cannot arise. It is now well settled that a statutory enquiry ought not to be interfered with at the threshold by the Writ Court unless if it can be reasonably established on undisputed facts that Writ Petitioner should not have been put into difficulty at all - can it be said that issuance of a notice or summons in regard to the production of certain documentary evidence would put the Petitioner in a peril or in an insurmountable difficulty or harassment in the contextual facts - the answer cannot but be in the negative. Certain consignments of goods arrived at the Port of Calcutta without any import licence. The Revenue Intelligence wants to make certain enquiry into the matter - true it is, that Customs have released the goods but that cannot, however, put an embargo into an enquiry by the Revenue Intelligence. The Revenue Intelligence have their own duty to perform so as to check evasion of duty and to discover illegal import and if during the course of such a duty certain enquiries are required to be made, in my view, question of law courts' intervention or interference therewith does not and cannot arise. It is a mere enquiry as noted above without there being any penal element. While it is true that in the notice the word 'smuggling' has been penned through, but that by itself would not give a cause of action for interference under Article 226 of the Constitution. The Appellant herein takes recourse on to two counts. The first being improper importation since admittedly no import licence was produced and on the second count definite and deliberate under-invoicing of the consignments resulting in loss of revenue to the extent of over Rs. 18 lacs -would the Law Court extend its judicious hand onto the Petitioner when the enquiry pertains to loss of revenue for the State or an unauthorised importation by reason of a technical defect or error assuming there be such -I am not oblivious of the fact that revenue statutes shall have to be interpreted strictly and in the event of there being any doubt the interpretation appearing to be more favourable to the Assessee ought always to be accepted and the law is well settled on this score. But in the contextual facts when there is likelihood of some revenue loss to the State and when, in fact, the revenue authority is desirous of making some enquiry in regard thereto which is otherwise not even harassing in nature, in my view, Law Court would be reluctant to interfere with such an action of the revenue. In any event technicalities there would be many but technicalities ought not to out-weigh the course of justice : no order has been passed but an attempt is being made to obtain certain information in regard to a consignment. It is no part of the Law Court's duty, in my view, to stop such an enquiry. The learned Trial Judge while referring to Section 108 expressly recorded that the notice has been issued under Section 108 and not 'Section 110'. I am not expressing any opinion in that regard but feel it expedient to record that this observation of the learned Trial Judge in that regard however, may not be termed to be very appropriate. Law Court exists for the society but that does not, however, mean and imply that Law Court should intervene on a sheer technicality. If the word 'smuggling' was not penned through then and in that event by reason of the definition as provided under Section 2(39) read with Section 111 of the Act of 1962, the Revenue Intelligence could have availed of Section 108 and there cannot possibly be any doubt in regard thereto for the purpose of an enquiry in regard to importation of goods : The Court is not called upon to investigate as to the circumstances under which the word 'smuggling' was penned through, but the fact remaining however, that there was such a deletion and it is on this factual backdrop, the Court shall have to address itself to the question as to whether the same would, amount to the impairment of course of justice and infringement of an existing legal right of a citizen warranting interference of the Court exercising jurisdiction under Article 226 of the Constitution. In my view however, the answer cannot but be in the negative, more so by reason of the fact that deletion of the word 'smuggling' cannot be said to be going to the root of the matter in order to make an enquiry as regards the importation and this is so by reason of the fact that there is no penal element involved in it. Be it noted that in terms of the summons the Writ Petitioner did appear before the Revenue Intelligence and on such appearance certain other documents were asked for and a notice was made over to the Writ Petitioner - In the contextual facts I do not find any reason to come to the conclusion as has been reached by the learned Trial Judge. In my view, the learned Trial Judge was clearly in error in entertaining the writ application since there is no involvement of any violation of any of the rights of the Writ Petitioner. It is at this juncture, however, let us analyse the true effect of cancellation of such a notice - does that mean and imply that an importer can escape the liability of payment of duty or the importer would be otherwise authorised to import goods without there being any import licence therefor - can the Writ Court allow such a situation concerning an unauthorised importation or avoidance of payment of any duty : In my view, the answer cannot but be in the negative. The authority must have a free hand in the matter of investigation or an enquiry and Law Court's intervention is not called for in the contextual facts. In that view of the matter I am unable to record my concurrence with the submissions of Mr. Rawat that a writ ought to be issued setting aside the notice of enquiry for production of documents.

16. It was next contended that in any event by reason of the provisional assessment by the Customs Department, the Revenue Intelligene cannot possibly sit on judgment over the order of the Deputy Commissioner of Customs. Mr. Rawat contended that the statute viz., Customs Act is a complete code in itself and the importation of any article into the territory of India is to be verified in terms of the Provisions of the Customs Act only and no other officer does have any jurisdiction or authority to deal with the matter. The second limb of Mr. Rawat's submissions does not, however, stand to any reason inasmuch as the notification as noted above, undisputably authorises the Revenue Intelligence to go into certain specified matters in regard to the importation of goods into this country and by reason of such a specific authorisation, question of the Directorate of the Revenue Intelligence not having any authority or jurisdiction does not and cannot arise. Such authorisation is specific in terms of the notification and no exception can be taken in regard thereto.

17. Turning attention on to the first limb as regards the provisional assessment of duty, be it noted, that the word 'Provisional' as used by the Legislature connotes lack of finality or the final assessment is yet to be effected and having due regard to the language used by the Legislature in Section 18 read with Section 19 of the Act, question of sitting on appeal over the assessment does not and cannot arise. The assessment is only provisional which in any event lacks the element of finality. The Statute itself has conferred on to the proper officer an authority and power to make further enquiry for assessing the duty and it is this power which is sought to be exercised by the Directorate of Revenue Intelligence. Admittedly, the goods

have not been finally assessed and it therefore cannot thus be said that the Revenue Intelligence was acting beyond the scope of the Statute. The effort on the part of the Revenue Authority is to see that proper duty is paid on account of importation in question and with that end in view the Revenue Intelligence wanted some further information so as to assess the situation, and since there was no final assessment question of the Directorate acting as an Appellate forum does not arise at all and as such question of intervention of the Law Court on account therefor under Article 226 of the Constitution also does not arise.

18. As noted above, the power of the High Court in the matter of issuance of a writ under Section 226 of the Constitution though is of widest possible amplitude, but there must involve a breach or a violation of a right conferred by law without which there cannot possibly be any cause of action for the Writ Court to intervene or interfere. The notice by itself does not state of any further action neither it has foisted any liablility of any nature whatsoever but pertains to only obtaining of certain information being given to the Revenue Intelligence. There is no injury far less any specific injury to the Petitioner and as such question of invocation of writ jurisdiction cannot be sustained in any way whatsoever.

19. In the premises I am of the view that Petitioner has no cause of action at this stage of proceeding to invoke the jurisdiction of the Writ Court under Article 226 of the Constitution and the assumption of jurisdiction in the contextual facts by the learned Single Judge under Article 226 of the Constitution is wholly mis-placed and unwarranted.

20. In that view of the matter the stay application succeeds and since no useful purpose would be sub-served in keeping the appeal pending - the appeal also stands disposed of with an order to the effect that the order of the learned Trial Judge stands set aside and quashed. The writ petition is also dismissed upon treating the same on the day's list. The Writ Petitioner is directed to produce the documents as has been directed by the Directorate of Revenue Intelligence with utmost expedition. The undertakings given by the Appellant stand discharged. No order however, as to costs.

21. Prayer for Stay made but refused.

22. Xerox Certified Copy of this Judgment be made available to the parties with expedition.