

PETITIONER:
NEW CENTRAL JUTE MILLS CO. LTD.

Vs.

RESPONDENT:
THE ASSISTANT COLLECTOR OF CENTRAL EXCISE, ALLAHABAD & ORS.

DATE OF JUDGMENT:
08/09/1970

BENCH:
GROVER, A.N.
BENCH:
GROVER, A.N.
SHAH, J.C.
HEGDE, K.S.

CITATION:
1971 AIR 454 1971 SCR (2) 92
1970 SCC (2) 820
CITATOR INFO :
D 1975 SC 17 (31)
R 1979 SC 789 (8)
RF 1989 SC 222 (3)
RF 1989 SC 516 (49)

ACT:
Central Excise & Salt Act 18 of 1947--Section 12 whether void for excessive delegation-Power under section to alter provisions of Sea Customs Act, 1878 in applying them to Act 18 of 1947 whether includes power to make changes in legislative policy.
General Clauses Act, s. 8(1)-whether enables provisions of Customs Act, 1962 to be applied under s. 12 of Act 18. of 1947 in place of the provisions of Sea Customs Act, 1878.
Customs Act, 1962, S. 105(1)--Conditions for issue of search warrant.

HEADNOTE:
The appellant company had a factory at Varanasi at which chemicals including ammonia were manufactured. It was considered by the Central Excise authorities that there had been evasion of duty on ammonia by the company. The Assistant Collector Central Excise issued a warrant for search and seizure of goods and documents, pursuant to which the premises of the aforesaid factory were raided in May, 1968 and certain documents seized. The company-filed a writ petition in the High Court which was dismissed by the Single Judge. The Division bench upheld the order of the Single Judge. In appeal to this Court by special leave, the questions that fell for consideration- were (i) Whether s. 12 of the Central Excise Act was void because the powers delegated to the Central Government thereby including the power to make alterations in the Act applied were excessive; (ii) Whether the Sea Customs Act, 1875 having been repealed, it was open thereafter to the Central Government under s. 12 of the Excise Act to apply s. 105 of the Customs Act 1962; and (iii) whether the Assistant Collector issued the warrants in the present case after due application of mind to relevant materials and 'facts in terms of s. 105(1) of the Customs Act, 1962.

HELD : (i) In the notifications issued inter alia applying S. 105(1) and s. 110 of the Customs Act, 1962, no such changes had been made as could possibly fall within the meaning of the word 'alterations'. The power to restrict and modify does not import the power to make essential changes. It is confined to alterations of minor character and no change in principle is involved. The word 'alteration' in s. 12 must be understood in the sense in which it was open to the legislature to employ it legitimately and in a constitutional manner. No question was thus involved of delegation either of any essential legislative functions or any change of legislative policy. [96 B-D]

In re Delhi Laws Act, 1912, [1951] S.C.R. 747, referred to.

(ii) S. 8(1) of the General Clauses Act provides that where any Central Act repeals and re-enacts with or without modification any provision of the former enactment then references in any such enactment or in any instrument, to the provisions so repealed shall, unless a different intention appears, be construed as references to the provisions so re-

enacted. By virtue of this provision it could not be disputed that in s. 12 of the Central Excise and Salt Act, 1947, the Customs Act, 1962 can be read in place of the Sea Customs Act, 1878. [96 E]

The contention that s. 12 of the Act empowers incorporation of the provision of the Sea Customs Act, 1878 in the Act itself and, therefore, 8(1) of the General Clauses Act, does not apply could not be accepted. Section 12 only contained a provision delegating limited powers to the Central Government to draw upon the provisions of the Sea Customs Act, 1878 for the purpose of implementing s. 3 of the Act. [96 F; 97 A]

Secretary of State for India in Council v. Hindusthan Co-operative Insurance Society, 58 I.A. 259, distinguished; The Collector of Customs Madras v. Nathella Sampatha Chetty

JUDGMENT:
The extension of s. 105 could not be said to be illegal merely because under s. 172 of the Sea Customs Act it was a Magistrate who after applying judicial mind had to issue search warrant whereas under the present notification after the enactment of the Customs Act, 1962, it was the Assistant Collector of Customs performing executive functions who had been empowered to issue a search warrant. By the latter notification the previous notification applying the provisions of the Sea Customs Act was superseded and no question with regard to the validity of the notification issued in 1963 and then amended in 1965 could survive.

Collector Custom & Excise Cochine & Ors, v. A. S. Bava [1968] 1 S.C.R. 82, distinguished [98 A-C]

(iii) On the facts of the case it could not be said that the Assistant Collector had no relevant material upon which the belief could be founded in terms of s. 105(1) of the Customs Act, 1962. [98 D]

&
CIVIL APPELLATE JURISDICTION: Civil Appeal No. 460 of 1970.
Appeal by special leave from the judgment and order dated May 20, 1969 of the Allahabad High Court in Special Appeal No. 1177 of 1968.

M. C. Chagla and R. Gopalakrishnan, for the appellant.
V. A. Seyid Muhammad, P. C. Chandi, B. D. Sharma and
S. P. Nayar, for the respondents.

The Judgment of the Court was delivered by Grover, J. This is an appeal by special leave from a judgement of the Allahabad High Court dismissing a writ petition by which the appellant challenged the validity of a warrant issued by the Assistant Collector, Central Excise, Allahabad, authorising the Superintendent Central Excise, Varanasi, to enter certain premises, search the same and seize the documents therefrom.

The appellant, which is a public limited company having its registered office at Calcutta, owns and runs a factory known as Sahu Chemicals and Fertilisers at Varanasi where chemicals such

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as ammonia and soda ash are manufactured. In February 1962 excise duty was fixed on manufacture of ammonia for the purpose of fertilisers at Rs. 25/- per metric ton, the rate being Rs. 125/- per metric ton if it was used for other purposes. The notification by which the aforesaid duty was payable was later withdrawn by means of another notification dated March 1, 1964 and thereafter no excise duty was required to be paid on the manufacture of ammonia. For the period from May 1962 to the beginning of March 1964 the appellant had paid duty at the rate of Rs. 25/- per metric ton on the ground that ammonia had been utilised for the purpose of manufacture of chemical fertiliser. The Central Excise authorities, however, had received information that part of the ammonia had been utilised for purposes other than the manufacture of fertilizers on which higher duty of Rs. 125/- per metric ton was payable. It was considered that there had been evasion of duty. On May 11, 1968, the Assistant Collector issued a warrant for the search and seizure of goods and documents pursuant to which the premises of the factory at Varanasi were searched on May 11, 12 and 13, 1968 and various documents were seized.

The writ petition was heard in the first instance by the learned single judge who dismissed it. In appeal his judgment was upheld by the Division Bench. Three contentions were raised before the Division Bench; the first was that S. 1.2 of the Central Excises and Salt Act, 1944, hereinafter called, the "Act" was void as the powers delegated to the Central Government by the legislature were excessive and beyond permissible limits. The second point was that the Sea Customs Act 1878 having been repealed it was not open to the Central Government under s. 12 of the Act to apply s. 105(1) of the Customs Act 1962 to the Act and the notification dated May 4, 1963 by which this was done was illegal and ultra vires. The third was that the search and seizure made by the respondents under the impugned authorisation dated August 11, 1968 and the authorisation itself were not in accordance with the provisions of s. 105 of the Customs Act 1962.

Section 12 of the Act is in the following terms:

S. 12. Application of the provisions of Act VIII of 1878 to Central Excise Duties.-The Central Government may, by notification in the official Gazette declare that any of the provisions of the Sea Customs Act 1878 relating to the levy on and exemption from customs duties, drawback of duty, warehousing offences and penalties, confiscation, and procedure relating to offences and appeals, shall, with such modifications and alterations as it may consider necessary or desirable to adapt them to the circumstances, be applicable

in regard to

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like matters in respect of the duties imposed by section

3."

When the Act was enacted s. 172 of the Sea Customs Act 1878 which could be applied to the Act under s. 12 provided :

S.172. "Any Magistrate may, on application by a Customs-Collector, stating his belief that dutiable or prohibited goods (or any documents relating to such goods) are secreted in any place within the local limits of the, jurisdiction of such Magistrate, issue a warrant to search for such goods.

Such warrant shall be executed in the same way and shall have the same effect, as a search warrant issued under the law relating to Criminal Procedure."

It may be mentioned that the words "or documents" were inserted by the Sea Customs Amendment Act 1955. After the enactment of the Customs Act 1962 by the notification dated May 4, 1963 as amended by the Notification dated February 6, 1965 amongst other provisions of the Customs Act 1962, sub-s. (1) of s. 105 and s. 1, IO were made applicable with certain modifications of a minor nature under s. 12 of the Act. The material part of these sections are reproduced below ;-

"S. 105(1) Power to search premises.-(1) if the Assistant Collector of Customs, or in any area adjoining the land frontier or the coast of India an officer of Customs specially empowered by name in this behalf by the Board, has reason to believe that any goods liable to confiscation or any documents or things which in his opinion will be useful for or relevant to any proceeding under this Act are secreted in any place, he may authorise any officer of customs to search or may himself search for such goods, documents or things."

"S. 110(3). The proper officer may seize any document or things which, in his opinion, will be useful for, or relevant to, any proceeding under this Act."

On the first point it has been urged on behalf of the appellant that s. 12 of the Act gave unrestricted and unlimited power to the Central Government to modify or alter the provisions of the Sea Customs Act 1878 and to apply the provisions of that Act with such modifications and alterations as the Central Government might consider appropriate. Modification, it has been pointed out, may be permissible, and may not fall within the vice of excessive delegation because the basic structure is not changed but alteration, it is suggested, has a much wider connotation and it emm-

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braces even the changing of the essential pattern of a thing or object. Such a power inherently involves the making of changes even in regard to matters pertaining to legislative policy.

In our opinion the above contention is purely of academic interest in the present case. In the notifications which were issued applying, inter alia, s. 105 (1) and S. 1 10 of the Customs Act 1962 no such changes have been made as can possibly fall within the meaning of the word "alterations".

It has been pointed out in the previous decisions of this Court that the power to restrict and modify does not import the power to make essential changes. It is confined to alterations of a minor character and no change in principle is involved. See *In re Delhi Laws Act, 1912*.⁽¹⁾ It was conceded before the High Court and has not been urged before us that the word "modifications" could not be taken as conferring on the Central Government any legislative power which was in excess of the permissible limits. Objection was taken only with regard to the word "alterations" but that word must be understood in the sense in which it was open to the legislature to employ it legitimately and in a constitutional manner. No question is thus involved of delegation either of any essential legislative functions or any change of legislative policy.

The second contention has hardly any merit. Section 8(1) of the General Clauses Act provides that where any Central Act repeals and re-enacts with or without modification any provision of a former enactment then references in any such enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted. By virtue of this provision it cannot be disputed that in s. 12 of the Act the Customs Act 1962 can be read in place of the Sea Customs Act 1878. An attempt has been made to argue that s. 12 of the Act empowers incorporation of the provisions of Sea Customs Act 1878 in the Act itself and whenever a notification is issued under it such provisions of the Sea Customs Act as have been applied become incorporated as an integral part of the Act. Section 8 of the General Clauses Act would not be applicable to a case of such incorporation and it can only apply if s. 12 can be regarded as containing a reference to the provisions of the Sea Customs Act. In *Secretary of State for Indian in Council v. Hindusthan Cooperative Insurance Society Ltd.* ⁽²⁾ it was accepted as a settled rule of construction that where a statute is incorporated by reference into a second the repeal of the first statute does not affect the second. The law laid down by the Privy Council can have no applicability to the present case. Section 12 of the Act did not bodily lift, as it were, certain provisions of the Sea Customs Act 1878 and incorporate

(1) [1951] S.C.R. 747.

(2) 58 I.A.259.

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them as an integral part of the Act. It only empowered the Central Government to apply the provisions of the Sea Customs Act 1878 with such modifications and alterations as might be considered necessary or desirable by the Central Government for the purpose of implementation and enforcement of s. 3 of the Act. No exception could be taken to the view of the High Court that s. 12 contained a provision delegating limited powers to the Central Government to draw upon the provisions of the Sea Customs Act 1878 for the purpose of implementing s. 3 of the Act. In *The Collector of Customs, Madras v. Nathella Sampathu Chetty & Another*⁽¹⁾ this Court examined at length the meaning and effect of incorporation by reference of one statute into another and discussed the Privy Council case referred to before in detail. Section 8(1) of the General Clauses Act, it was pointed out, 'dealt with reference or citation of one enactment in another without incorporation. The usual or recognised formulae generally employed to effect incorporation were considered; for instance the words used in s. 20 of 53 and 54 Vict. Ch. 70-Housing of the Working

Classes Act, 1890, the words used were

" shall, for that purpose, be deemed to form part of this Act in the same manner as if they were enacted in the body thereof."

In 54 and 55 Vict. Ch. 19, s. 1(3), the language employed was, :

"The provisions of s. 134 of the said Act (set out in the schedule) shall apply as if they were herein enacted."

It is unnecessary to mention the other provisions because a comparison of the recognised formulae with the text of s. 12 of the Act shows that the provisions of the Sea Customs Act 1878 were not meant to be incorporated in the Act and were only to be applicable to the extent notified by the Central Government for the purpose of the duty leviable under s. 3. Another aspect which has been presented under the second contention is that the impugned notification is bad and stands vitiated because under the previous notification which applies s. 172 of the Sea Customs Act 1878 it was a Magistrate who had to bring his judicial mind to bear on the expediency or desirability of issuing a warrant for search whereas under the present notification after the enactment of the Customs Act 1962 it is the Assistant Collector of Customs who performs executive functions and who has been empowered to issue the warrant for search and seizure. The decision of this Court in Collector of Customs & Excise, Cochin & Ors. v. A. S. Bava(2) has been sought to be pressed into service in support of the argument that extension of s. 105 (1),

(1) [1962] (3) S.C.R. 786.

(2) [1968] 1 S.C.R. 82.

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is illegal. In that case the provisions of S. 129 of the Sea Customs Act 1878 had been applied under S. 12 of the Act. Section 129 dealt with the procedure relating to appeals and required an appellant to deposit pending the appeal the duty or penalty imposed and empowered the appellate authority, in its discretion, to dispense with such deposit pending the appeal in any particular case. There was a provision in the Act itself, s. 35, which gave an unfettered right of appeal to a person aggrieved by any decision or order made under the Act. It was in these circumstances that it was held that s. 129 of the Sea Customs Act 1878 could not be made applicable so as to whittle down the substantive right of appeal conferred by s. 35 of the Act. The ratio of that decision can afford no assistance to the appellant in the present case. By the notification issued under s. 12 of the Act after the enactment of Customs Act 1962, the previous notification under the Sea Customs Act 1878 stood superseded and no question survives with regard to the validity of the notification issued in 1963 and amended in 1965.

On the third point an attempt was made to argue that the Assistant Collector, while issuing the, warrant for search and seizure did not apply his mind to the relevant and necessary facts. Our attention has been invited to the warrant itself in which the documents have not been particularised or specified but the words certain documents" have been used. The learned single judge dealt with this matter fully and repelled the contention that there was no relevant material before the authority upon which the belief could be founded in terms of s. 105(1) of the Customs Act 1962 by the Assistant Collector. We find no merit in this contention.

The appeal fails and it is dismissed with costs.

G.C.
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Appeal dismissed.

JUDIS