

PETITIONER:
NORTHERN CORPORATION

Vs.

RESPONDENT:
UNION OF INDIA AND ORS.

DATE OF JUDGMENT 06/08/1990

BENCH:
MUKHARJI, SABYASACHI (CJ)
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MUKHARJI, SABYASACHI (CJ)
SAIKIA, K.N. (J)

CITATION:
1990 AIR 764 1990 SCR (3) 621
1990 SCC (4) 239 JT 1990 (3) 699
1990 SCALE (2) 279

ACT:

Customs Act, 1962: Section 15(1)(b)--Customs duty--Determination of rate--Goods imported could not be cleared due to ban imposed by income tax authorities--Whether importer liable to pay at the enhanced rate prevailing at the time of clearance.

Constitution of India, 1950: Article 32--Scope of--Excise duty--Liability to pay particular duty--Dependent on interpretation of law, and determination of facts--Enforcement of provisions of the Act--Whether a breach of fundamental right--Whether permissible to move the Court without seeking relief within the procedure prescribed by the Act.

HEADNOTE:

The petitioner-Corporation imported certain goods. The goods were bonded and could not be got released due to the ban imposed by the Income Tax authorities, under Section 132(1) of the Income Tax Act, 1961. Subsequently after the ban was lifted, the petitioner approached the authorities for clearance of the goods, but the customs authorities demanded payment of customs duty at the enhanced rate which was prevailing at the time of clearance. Hence the petitioner filed a Writ Petition before this Court challenging the demand as arbitrary, illegal and unconstitutional.

It was contended that though the petitioner was willing to clear the goods on payment of the then prevailing custom duty, the goods could not be cleared due to circumstances beyond its control, by the order of the Income Tax authorities and, therefore, the authorities could not claim enhanced duty.

On behalf of the respondents it was contended that in view of Section 15(1)(b) of the Customs Act, especially the expression "actually removed" used therein, the liability of the petitioner to pay the duty was the duty at the time of clearance of the goods.

Disposing of the Writ Petition, this Court,
622

HELD: 1. Section 15(1)(b) of the Customs Act, 1962 clearly requires that the rate of duty, rate of exchange and tariff applicable to any imported goods shall be the rate

and valuation in force on the date on which goods are actually removed from the warehouse. Therefore, in view of the language used in Section 15(1)(b) of the Act, specially in the light of the expression 'actually removed' the petitioner was liable to pay excise duty at enhanced rate prevailing on the date the goods were cleared. The prohibitory orders, arbitrary or not, would postpone the date of clearance, and as such would postpone the determination of the duty. [626F; 627C]

Prakash Cotton Mills (P) Ltd. v. B. Sen & Ors., [1979] 2 SCR 1142, relied on.

2.1 Recourse to Art. 32 of the Constitution can be had if there is a breach of the fundamental rights, provided the other conditions are satisfied. BUT in a matter where liability of a citizen to pay a particular duty depends on interpretation of law and determination of facts and the provision of a particular statute, for which elaborate procedure is prescribed, enforcing of those provisions of the Act would not breach fundamental right and, without taking any resort to the provisions of the Act, it is not permissible to move this Court on the theoretical basis that there is breach of fundamental right. Whenever a person complains and claims that there is a violation of law, it does not involve breach of fundamental right for the enforcement of which alone Art. 32 of the Constitution is attracted. [627E; 628A-D]

Smt. Ujjam Bai v. State of Uttar Pradesh, [1963] 1 SCR 778, relied on.

2.2 In a particular situation whether customs duty is payable at the rate prevalent on a particular date or not has to be determined under the four corners of the Customs Act, 1962. [627F]

In the instant case, the petitioner has no fundamental right as such to clear any goods imported without payment of duties in accordance with the law. There is procedure provided by law for determination of the payment of customs duty. The revenue has proceeded on that basis. The petitioner cannot seek to remove the goods without payment at that rate or without having the matter determined by the procedure envisaged and enjoined by the law for that determination. The petitioner, without seeking to take any relief within the procedure envisaged under the Act, had moved this Court for breach of fundamental right. This is not permissible and should never be entertained. [627F-H]

Relief under Article 32 of the Constitution is therefore, wholly inappropriate in the facts and circumstances of the instant case. [628B]

JUDGMENT:

ORIGINAL JURISDICTION: Civil Writ Petition No. 443 of 1988.

(Under Article 32 of the Constitution of India).

Rajiv K. Garg and N.D. Garg for the Petitioner.

Soli J. Sorabjee, Attorney General, M. Chandrasekharan and P. Parmeswaran for the Respondents.

The Judgment of the Court was delivered by

SABYASACHI MUKHARJI, CJ. This is an application under Article 32 of the Constitution. Northern Corporation is the petitioner in the instant application and the Union of India, the Collector of Customs and the Assistant Collector of Customs (Bond Department) are the respondents.

On 11th May, 1983, the licensing authority issued import

licence No. 2959845 for Rs.20, 12,729 in favour of M/s Industrial Cable India Ltd., Rajpura. The licence holder transferred the same in favour of M/s Metalic metal Industries. The transferee-licence holder issued a letter of authority in favour of the petitioner for the import of MSCR defective sheets or coils. The letter of authority was issued on 21st May, 1984.

The petitioner herein placed order on M/s Sayani Enterprises Pvt. Ltd., Singapore for the supply of MSCR defective sheets or coils on 30th May, 1984. The foreign supplier shipped the material in three consignments and the goods arrived at the Bombay Port on 12th June, 1984. The clearing agent of the petitioner filed bills of entry on 30th July, 1984 for warehousing under section 59 of the Customs Act, 1962 (hereinafter referred to as 'the Act'), and the same was allowed. The goods were bounded on 7th August, 1984. It may be mentioned that the rate of duty on the day was 60% + 40% + Rs.650 per M.T. and 10% C.V.D. The total duty on the consignment was assessed as Rs.26,20,109.55.

624

On 21st August, 1984, the petitioner's clearing agent filed six bills of entry for ex bond clearance. However, the bills of entry were returned with the remark that "please obtain no objection from the income tax". This was endorsed on 24th August, 1984. The petitioner states that thereafter he came to know that the income tax authorities had imposed ban under section 132(1) of the Income Tax Act, 1961. The petitioner asserted that he was ever ready and willing, rather was anxious, to get the material on payment of the then prevailing customs duty. However, due to circumstances beyond the control of the petitioner, that it to say, by the order of the Income Tax Authorities the goods could not be released. This factor was not of the petitioner's making, according to the petitioner.

On 30th March, 1988, the Income Tax Department issued the necessary no objection certificate, thus lifting the ban. On 4th April, 1988, the petitioner's agent contacted the customs authority for clearance of the goods. The duty as is prevalent now is Rs.5,000 per M.T. + addl. duty 45% and C.V.D. at Rs.325 per M.T. The total duty came to a very large sum of money. The demand, according to the petitioner, was arbitrary, illegal and unconstitutional.

The instant writ was filed under Article 32 of the Constitution on 16th April, 1988 and on 22nd April, 1988, this Court passed the following order:

"Pending notice, there will be limited stay to the extent that the goods name, "MSCR defective sheets/coils" which have arrived at Bombay Port per S.S. "SEA PRIMROSE" will be released forthwith on petitioner's paying customs and other duties as leviable on 21.8.84. In addition to the above payment the petitioner will deposit Rs.5 lakhs and for the balance amount petitioner will furnish surety (which may consist of ITC bond but excluding cash/bank guarantee/NSC/FDR) to the satisfaction of the Collector of Customs."

We directed that the notice should be given to the revenue authority to appear before us. Learned Attorney General had appeared pursuant to the notice on behalf of the respondents. It is contended on behalf of the respondents that for the payment of duty, the liability of the petitioner to pay the duty is the duty at the time of clearance of the goods. Our attention was drawn to section 15(1)(b) of the Act which postulates that the rate of duty and tariff valuation, if any, applicable

625

to any imported goods, shall be the rate and valuation in force, in case the goods are cleared from a warehouse under section 68, on the date on which the goods are actually removed from the warehouse. Section 15 of the Act reads as under:

"S. 15. Date for determination of rate of duty and tariff valuation of imported goods.

(1) The rate of duty and tariff valuation, if any, applicable to any imported goods, shall be the rate and valuation in force--

(a) in the case of goods entered for home consumption under section 46, on the date on which a bill of entry in respect of such goods is presented under that section;

(b) in the case of goods cleared from a warehouse under section 68, on the date on which the goods are actually removed from the warehouse;

(c) in the case of any other goods, on the date of payment of duty:

Provided that if a bill of entry has been presented before the date of entry inwards of the vessel by which the goods are imported, the bill of entry shall be deemed to have been presented on the date of such entry inwards.

(2) The provisions of this section shall not apply to baggage and goods imported by post."

Learned Attorney General laid emphasis on the expression "actually removed" in clause (b) of section 15(1) of the Act. Our attention was also drawn to section 16 of the Act which reads as under:

"S. 16. Date for determination of rate of duty and tariff valuation of export goods.

(1) The rate of duty and tariff valuation, if any, applicable to any export goods, shall be the rate and valuation in force--

(a) in the case of goods entered for export under section 50, on the date on which the proper officer makes an order permitting clearance and loading of the goods for exportation under section 51;

(b) in the case of any other goods, on the date of payment of duty.

(2) The provisions of this section shall not apply, to baggage and goods exported by post."

It was contended on behalf of the revenue that in view of the aforesaid, it would not be possible for the petitioner to clear the goods on payment of duty on the date when the petitioner was actually expressed willingness to remove the goods. Our attention was drawn to the decision of this Court in *Prakash Cotton Mills (P) Ltd. v. B. Sen & Ors.*, [1979] 2 SCR 1142. In that case, the appellant stored on December 22, 1965 in the Customs warehouse, goods imported by him under a licence, and cleared them on various dates between September 1, 1966 and February 20, 1967. Under protest, they paid customs duty at the enhanced rates in accordance with the amended provisions. Later, they claimed rebate alleging that since the consignments had been received, stored and assessed to duty much before the promulgation of the Ordinance, they were liable to pay duty at the rate prevailing on the date of warehousing. Their appeals and revision were unsuccessful. In appeal to this Court it was contended that the material change in s. 15 being only the substitution of the words "the rate of duty" the customs authorities were not entitled to take into account the new rate of exchange at the appreciated value of currency in respect of the consignments stored in the warehouse prior to

the coming into force of the Ordinance. Dismissing the appeal, this Court held that the customs authorities were right in taking the view that the rate of duty applicable to the imported goods should be determined according to the law prevalent on the date they were actually removed from the warehouse. Section 15(1)(b) clearly requires that the rate of duty, rate of exchange and tariff applicable to any imported goods shall be the rate and valuation in force on the date on which goods are actually removed from the warehouse. Under s. 49 and importer may apply to the Assistant Collector of Customs for permission to store the imported goods in a warehouse pending their clearance and he may be permitted to do so; and s. 68 provides that an importer of any warehoused goods may clear them if the import duty leviable on them has been paid. In that case, it was found that as the goods were removed from the warehouse after the amending Ordinance had come

627

into force, the customs authorities and the Central Government were right in taking the view that the rate of duty applicable to the imported goods should be determined according to the law prevalent on the date these were actually removed from the warehouse.

Mr. Garg, appearing for the petitioner, on the other hand contended before us that his client was willing indeed to pay the duty when the goods crossed the customs barrier and were in the process of being cleared, but could not be cleared because of the prohibitory orders of the Income Tax Department under section 102 of the Customs Act. In that light, it was not possible, Mr. Garg contended, for the Income Tax Department to claim enhanced duty due to facts which were not for the fault of the petitioner. In view of the language used in section 15(1)(b) of the Act, it is difficult to accept this contention specially in the light of the expression used 'actually removed'. It must be accepted that the prohibitory orders, arbitrary or not, would postpone the date of clearance and as such would postpone the determination of the duty. Therefore, it is difficult to accept Mr. Garg's contention.

However, there is a far more serious objection in entertaining this application under Article 32 of the Constitution. Article 32 of the Constitution guarantees the right to move the Supreme Court for enforcement of fundamental rights. If there is breach of the fundamental rights, the petitioner can certainly have recourse to Article 32 of the Constitution provided other conditions are satisfied. But we must, in all such cases, be circumspect of what is the right claimed. In this case, the petitioner as such has no fundamental right to clear the goods imported except in due process of law. Now in the facts of this case, such clearance can only be made on payment of duty as enjoined by the Customs Act. In a particular situation whether customs duty is payable at the rate prevalent on a particular date or not has to be determined under the four corners of the Customs Act, 1962. The petitioner has no fundamental right as such to clear any goods imported without payment of duties in accordance with the law. There is procedure provided by law for determination of the payment of customs duty. The revenue has proceeded on that basis. The petitioner contends that duty at a particular rate prevalent at a particular date was not payable. The petitioner cannot seek to remove the goods without payment at that rate or without having the matter determined by the procedure envisaged and enjoined by the law for that determination. The petitioner without seeking to take any relief within the procedure envisaged

under the Act had moved this Court for breach of fundamental right. This is not permissible and should never be

628

entertained. In a matter of this nature where liability of a citizen to pay a particular duty depends on interpretation of law and determination of facts and the provision of a particular statute for which elaborate procedure is prescribed, it cannot conceivably be contended that enforcing of those provisions of the Act would breach fundamental right which entitle a citizen to seek recourse to Article 32 of the Constitution. We are, therefore, clearly of the opinion that relief under Article 32 of the Constitution is wholly inappropriate in the facts and the circumstances of this case. It has further to be reiterated that for enforcement of fundamental right which is dependent upon adjudication or determination of questions of law as well as question of fact without taking any resort to the provisions of the Act, it is not permissible to move this Court on the theoretical basis that there is breach of the fundamental right. Whenever a person complains and claims that there is a violation of law, it does not automatically involve breach of fundamental right for the enforcement of which alone Article 32 of the Constitution is attracted. It appears that the facts of this nature require elaborate procedural investigation and this Court should not be moved and should not entertain on these averments of the Article 32 of the Constitution. This position is clearly well settled, but sometimes we are persuaded to accept that an allegation of breach of law is an action in breach of fundamental right. In this connection, reference may be made to the decision of this Court in *Smt. Ujjam Bai v. State of Uttar Pradesh*, [1963] 1 SCR 778, where this Court observed at p. 842 of the report as under:

"In my opinion, the correct answer to the two questions which have been referred to this larger Bench must be in the negative. An order of assessment made by an authority under a taxing statute which is intra vires and in the undoubted exercise of its jurisdiction cannot be challenged on the sole ground that it is, passed, on a misconstruction of a provision of the Act or of a notification issued thereunder. Nor can the validity of such an order be questioned in a petition under Art. 32 of the Constitution. The proper remedy for correcting an error in such an order is to proceed by way of appeal, or if the error is an error apparent on the face of the record, they by an application under Art. 226 of the Constitution. It is necessary to observe here that Art. 32 of the Constitution does not give this Court an appellate jurisdiction Such. as is given by Arts. 132 to 136. Article 32 guarantees the right to a constitutional remedy and relates only to the enforcement of the rights conferred

629

by Part 111 of the Constitution. Unless a question of the enforcement of a fundamental right arises, Art. 32 does not apply. There can be no question of the enforcement of a fundamental fight if the order challenged is a valid and legal order, in spite of the allegation that it is erroneous. I have, therefore, come to the conclusion that no question of the enforcement of a fundamental fight arises in this case and the writ petition is not maintainable."

In the aforesaid view of the matter, we are clearly of the opinion that Article 32 of the Constitution should not have been resorted to and this application does not lie under Article 32 of the Constitution.

However, it appears that this Court has passed an order

on 22nd April, as indicated hereinbefore. It is stated that the goods have been cleared pursuant to that order. The revenue would be at liberty to take appropriate action in accordance with law for the recovery of the dues.

This writ petition is accordingly disposed of.

N.P.V.

Petition disposed

of.

630

JUDIS