UNION OF INDIA & ORS.

v.

SECURITY AND FINANCE (P) LTD.

October 6, 1975

[V. R. KRISHNA IYER AND A. C. GUPTA, JJ.]

Import controls—Power to determine the head or Entry under which any particular commodity falls under sections 3(2) *and* 4 *of the Import and Export (Control) Act* (1947) *read with section* 167 (*entry* 8) *of the Sea Customs Act (Act VIII)* 1878.

Sea Customs Act (Act VIII)—Sections 20, 167, 183 & 184—*Whether an appropriate order under section* 183 *precludes the authorities from levying duty under section* 20—*Interpretation of two penal provisions of the import laws and powers of the authorities.*

The respondent company imported auto cycle parts under the guise of motor vehicle parts, for which only he had a valid licence under the Import laws. In respect of certain consignments of imports from U.K., the customs authorities by a single order dt. 14-11-1955 passed the following:

(i) acting under section 167(8) of the Customs Act it gave an option to the respondent to pay fine in lieu of confiscation of the goods under section 182 and (ii) acting under sections 183 and 20 of the Customs Act to pay the differential duty between auto parts and the motor parts.

The respondent challenged this order before the High Court on the ground that once the power under section 183 has been exercised the authorities had no further power to levy the differential duty. The High Court while quashing the order imposing penalty in lieu of confiscation directed payment of the import duty ordinarily leviable for the auto cycle pedals imported. Against this view of the limitation on the powers of the Collector, the Union came by way of special leave, while allowing the appeal the Court,

HELD: (i) It is primarily for the Import Control Authority to determine the head or entry under which any particular commodity falls. Of course if a construction adopted by the authority regarding the concerned entry were perverse, or grossly irrational, then the Court could or would undoubtedly interfere. [88 C—D].

"*Ganga Setty's* case, A.I.R. 1963 S.C. 1319, followed".

(ii) The scheme of the Sea Customs Act reveals that Import/export duty is an obligation/cast by section 20 of the Act. It is a tax, not a penalty; it is an innocent levy once the exigible event occurs; it is not a punitive import for a contravention of the law. Confiscation, penalty and fine provided for under ss. 167 (Item 8) and 183 are of the species of punishment for violation of the scheme of prohibition and control. [89 G].

(iii) Two legal consequences followed the importation of pedals, uncovered by any licence viz. (1) the importation attracted duty which any importer, licit or illicit, had to pay the moment customs barrier was crossed and (ii) the commission of the offence of importing pedals without a licence trapping the respondent in the coils of S. 167, entry 8 inviting the jurisdiction of the authorities to exercise their powers under ss. 182 or 183. [89 H, 90 A].

(iv) The order dual in character, although clubbed together in a single document is valid and it does not preclude the authorities levying duty under section 20, since obligation under section 20 is independent of the liability u/s 183. Non-felicitous and inept expressions used in the order are perhaps apt to mislead, but the intendment is clear that what was done, was not confiscation, but giving an option to pay a quantified fine in place of confiscation. The order was a composite one, and is quite legal. [90 D, 91 B—D].

A *Collector of customs* v. *H. S. Mehra* A.I.R. 1964 Mad. 504; *Shewpujanrai Indrasanrai Ltd.* v. *The Collector of Customs,* [1959] S.C.R. 821 referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 897 of 1968.

Appeal by Special Leave from the Judgment & Order dated the 24th July, 1967 of the Delhi High Court in L.P.A. No. 54 of 1967.

G. L. Sanghi and *Girish Chandra* for the Appellants.

B *S. S. Javali* (*Amicas Cariae*) for the Respondent.

The Judgment of the Court was delivered by

KRISHNA IYER, J. The respondent imported Auto Cycle Pedals under the guise of motor vehicle parts for which he had secured the relevant licence. These two articles are different from the point of view of the law controlling imports. As laid down in *Ganga Setty's* C *case*(1) by the Court, it is primarily for the Import Control Authority to determine the head or entry under which any particular commodity falls. Of course, if a construction adopted by the authority regarding the concerned entry were perverse, or grossly irrational, then the court could and would undoubtedly interfere. In the present case the High Court has held that the view of the Customs Officials could not be considered perverse and has declined to set aside the impugned D order on that score.

Even at this stage it is appropriate to quote the order under challenge which runs :

> "M/s. The Security and Finance Ltd., Delhi imported from U.K. the above-mentioned goods for which they did not possess a valid Import licence issued under Serial No. E 301/Pt.IV of Import Trade Control Schedule. The importation was therefore considered as unauthorised. The importers were therefore in this Custom Memo No. S24C-1276/55A dated 30-9-55 called upon to show cause why the goods should not be confiscated and penal action taken under s. 167(8) Sea Customs Act read with Section 3(2) of the Import & Exports (Control) Act. In reply to the F said show cause Memo, the Clearing Agents of the importers produced a licence for Motor Vehicles parts, and claimed release of the goods against the said licence. They further stated that similar consignment has been released in the past against similar licence. Furthermore, no public Notice has been issued to the effect that Auto Cycle Pedals will not be allowed clearance against Motor Vehicle Parts G licence. The arguments so advanced are not acceptable. The importers did not avail of the personal hearing offered to them in the said show cause memo.
>
> *ORDER*
>
> The importation of the above goods without proper licence is prohibited under sections 3(2) and 4 of the Im- H port & Export (Control) Act of 1947 and Notification issued thereunder. I *accordingly confiscate the goods*

(1) A.I.R. 1863 S.C. 1319

under section 167(8) *Sea Customs Act.* In lieu of confiscation I gave an option under section 183 ibid to the importers to clear the goods on payment of a fine of Rs. 22,600/- (rupees twentytwo thousand six hundred only). Customs duty and other charges as leviable on the goods will have to be paid in addition before these could be cleared out of customs control.

... Dated 14-11-55. Sd/-

Dy. Collector of Customs"

Even so, the Court quashed the latter limit of the order under challenge which had imposed penalty in lieu of confiscation and, on top of it, directed payment of the import duty ordinarily leviable for the auto cycle pedals imported.

The only ground which led to this fatal consequence was that the authorities, acting under s. 183 of the Sea Customs Act, 1878 (Act VIII of 1878) (for short, the Act), had no further power to direct the importer-petitioner *i.e.,* the respondent, to pay excess duty which represents the difference between what is leviable for motor vehicles spares and auto cycle pedals. Aggrieved by this view of the limitation on the powers of the Collector of Customs the appellant, *i.e.,* the Union of India, has come up this Court, after securing special leave to appeal. The respondent was not represented by counsel and since the point involved was one of law and the amount involved not inconsiderable, we requested Shri Javali, Advocate, to serve as *amicus curiae.* He has argued the case with ability and we record our appreciation of his services to the Court. Indeed, but for his close scrutiny of the order of the Deputy Collector of Customs we would not have perceived the mix-up and other defects he highlighted in his submissions.

We have already stated that a fine, in lieu of confiscation, had been imposed by the Collector of Customs. This he did, under s. 183 of the Act, but not content with that imposition he also directed the payment of the full duty on the goods imported as condition precedent to the clearing of the goods out of the 'customs control'.

Does the order under s. 183 preclude him from levying duty under s. 20? This is the short issue before us. A close study of the scheme of the relevant provisions, powers and levies discloses a clear dichotomy which has escaped the attention of the High Court. Import/export duty is an obligation cast by s. 20 of the Act. It is a tax, not a penalty; it is an innocent levy once the exigible event occurs; it is not a punitive impost for a contravention of the law. Confiscation. penalty and fine provided for under ss. 167 (item 8) and 183 are of the species of punishment for violation of the scheme of prohibition and control. Once this distinction and duality are remembered, the interpretative process simplifies itself.

Admittedly, the respondent imported pedals uncovered by any licence. Two legal consequences followed. The importation attracted duty which any importer, licit or illicit, had to pay the moment

customs barrier was crossed. Secondly, the commission of the offence of importing pedals without a licence caught the offender in the coils of s. 167, entry 8, inviting the jurisdiction of the authority prescribed under s. 182 to confiscate the goods or, alternatively, to impose a fine in lieu of confiscation, under s. 183, Of course, if confiscation is resorted to, the title vests in the State, as provided in s. 184.

Import duty has to be paid inevitably in these cases, by the importer. Confiscation or fine in lieu thereof is an infliction on the offender or circle of offenders falling within s. 167, Entry 8. Sometimes, the burden in both the cases, falls on the same person. At other times, they may fall on different persons. In some cases the importer as well as the confiscatee may be identified and so the duty and the penalty may be imposed validly. In other cases it may be difficult to get at the actual person who imported or was concerned in the offence of importation contrary to the prohibition or restriction clamped down by the law. In that event, only confiscation and, alternatively, fine, may be imposed.

Viewed in this perspective, the answer to the question that arises for decision is simple. In the present case, as held by the High Court, the respondent did import auto cycle pedals outside the permit or licence. He is therefore liable to pay import duty normally leviable from pedal importers. He has admittedly transgressed the provisions of Entry 8 of s. 167 by importing goods not covered by the licence and therefore comes within the penal complex set out in ss. 182, 183 and 184. In the present case, the Deputy Collector, the competent authority, has chosen to give the owner of the goods, the respondent, option to pay, in lieu of confiscation, a fine. He has not confiscated the goods and, therefore, s. 184 is not operational in this context. In short, the obligation under s. 20 is independent of the liability under s. 183. The order, dual in character, although clubbed together in a single document, is therefore valid in entirety. Even so, the confusion has been caused by the Deputy Collector failing to keep distinct the two powers and the two liabilities and thereby leading to avoidable jumbling.

Shri Javali rightly exposed the order impugned to the actinic light of criticism by pointing out that this rolled up order suffers from several infirmities, apart from its unspeaking brevity. The Deputy Collector does not state that he is levying duty on the importer *qua* importer under s. 20. He does grievously err in the first breath confiscating the goods (in which case the title vests in Government under s. 184) and in the very next directing payment of fine in lieu of confiscation. Both cannot co-exist. Moreover, he forgets that s. 167, entry 8, empowers, apart from confiscation of the offending goods, a penalty also which is independent of the fine in s. 183, in lieu of confiscation. This confused and laconic order only highlights the need for some orientation course in law for officers who are called upon to exercise judicial powers and write reasoned orders.

However, we are prepared to gather from the order under attack two levies imposed in exercise of two distinct powers, as earlier explained. The import duty has been made a condition for the clearance of the goods. This is right and it is impossible to say that the said payment is not justified by s. 20. Likewise, the authority, when it imposed a fine, was exercising its power under s. 183. We can readily see that he did not mean to confiscate the goods. He only proposed to confiscate and proceeded to fix a fine in lieu thereof. Non-felicitous and inept expressions used in the order are perhaps apt to mislead, but the intendment is clear that what was done was not confiscation but giving an option to pay a quantified fine in place of confiscation. The order was a composite one, when read in the sense we have explained, and is quite legal. Therefore we reach the conclusion that the appellant is entitled to win and the High Court was in error.

The line of reasoning which has appealed to us is echoed in a decision of the Madras High Court reported as *Collector of Customs* v. *H. S. Mehra*(1). Ramachandra Iyer, C.J., speaking for the Bench, has explained the legal position clearly and we agree with it. Two decisions of this Court were referred to before the High Court and, indeed, the decision of the High Court proceeded on the footing that those two decisions concluded the matter. The Madras decision distinguishes—and for right reasons, if we may say so with respect—those two rulings of this Court. They do not apply to the facts of the situation before us. On the other hand, both those cases deal with quantities of gold seized from persons as smuggled goods. How they were imported, who were involved in the import, and who could, therefore, be made liable for import duty, were left blank in those two cases. Therefore, the conditions imposed by the customs authorities for payment of import duty could not be supported. We will go into a little more detail to explain those two decisions and their non-applicability to the point we are discussing. We may state that neither of them decides that once a fine in lieu of confiscation is imposed, the power to levy duty under s. 20 is deprived if. It is not as if the authorities could not exercise both the powers, where the facts attracted both s. 20 and ss. 182 to 184.

In *Shewpujanrai Indrasanrai Ltd.* v. *The Collector of Customs*(2) this Court had to consider an order passed by the Collector under the Sea Customs Act in respect of smuggled gold. An option to pay a fine of Rs. 10,00,000/- was ordered but the Collector tied it up with two conditions for the release of the 'confiscated gold'. One was the production of a permit from the Reserve Bank of India in respect of the gold and the other was the payment of proper customs duties in respect of the gold. Both the conditions were held to be illegal by this Court. It was conceded in that case by the learned Solicitor General that there was no provision in the Foreign Exchange Regulation Act or the Sea Customs Act under which the Reserve Bank could give permission in respect of smuggled gold with retrospective effect. What

(1) A.I.R. 1964 Mad. 504.

(2) [1959] S.C.R. 821.

A is more, if it could, there would be no offence under s. 167, entry 8, and the order of confiscation itself would be bad. As to the second condition of payment of customs duty, there was no finding by what means the gold was smuggled—by sea or by land—and therefore it was difficult to see how s. 88 which was sought to be pressed into service could be of any help. Indeed, the decision of the Bombay High Court in *Hormasji Elavia* v. *The Union of India*(1) had been brought B to the notice of the learned Judges, where customs duty was held payable under s. 88 of the Sea Customs Act, but it was distinguished on the score that in that case the goods had been tracked down as smuggled through the port of Kantiajal without payment of any duty and, in those circumstances, it was held that s. 88 applied. The manner of import, once identified the power to levy duty could be exercised C under the *appropriate Act*. Therefore, *Shewpujanrai* (supra) is no authority for the proposition that import duty cannot be levied once fine in lieu of confiscation is imposed.

The later decision in *Amba Lal* v. *Union of India*(2) also is of no assistance. That also related to smuggled gold. The Collector of Customs imposed conditions for the release, in that case, of the confiscated gold. Though the order was struck down on a concession by D the learned Additional Solicitor General, on the facts as disclosed in that case, the contraband goods were recovered by search from the appellant's house, but the authorities could not establish by any evidence that the seized articles were imported into India after the customs barrier was put up for the first time between India and Pakistan. It is obvious, therefore, that import duty could not be levied from the person from whom the seizure was effected.

E The case before us stands clearly on a different footing and the order imposing fine in lieu of confiscation and also levying import duty is good. We allow the appeal but, in the circumstances of the case, there will be no order as to costs.

S.R. *Appeal allowed.*

(1) Cr. Appl. 1296 of 1953 decided on 18-8-1953.
(2) [1961] 1 S. C. R. 933.