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February, 7.

ABDUL AZIZ AMINUDIN

v.

STATE OF MAHARASHTRA

(S. J. IMAM, K. SUBBA RAO, RAGHUBAR DAYAL, and J. R. MUDHOLKAR, JJ.)

Import and Export—Powers to prohibit or restrict import and Export—Scope of—Licence to import goods issued subject to condition not to sell goods imported—Contravention of the condition—Licensee, if liable to punishment—Import and Export (Control) Act, 1947 (XVIII of 1947), ss. 3, 5—Imports (Control) Order, 1955, cl. 5, sub-cls. (2), (4).

The appellant as the Chairman of the Powerloom Sadi Manufacturer's Co-operative Association, obtained the licence for the import of certain quantity of art silk yarn by the Association. The licence was issued subject to the condition that the goods would be utilised only for consumption as raw material or accessories in the licence-holders' factory and that no portion thereof would be sold to any party. The Association could not arrange for the necessary finances and therefore had the goods imported through Warden & Co., who financed the transaction. Part of the goods received was utilised in accordance with the condition of the licence, the rest was however sold by Warden & Co., and the amount was paid to the Association by way of profits. The appellant and the other members of the Association were prosecuted for committing the offence under s. 5 of the Imports and Exports (Control) Act,1947, for having contravened the Imports (Control) Order, 1955, but all of them were acquitted by the trial court. The State appealed againt the acquittal of the appellant alone which was allowed by the High Court and the appellant was convicted and sentenced to three months' rigorous imprisonment alongwith a fine of Rs. 2,000/-.

Held, that the power conferred under s. 3(1) of the Act is not restricted merely to prohibiting or restricting imports at the point of entry but extends also to controlling the subsequent disposal of the goods imported. It is for the appropriate authority and not for the courts to consider the policy, which must depend on diverse consideration, to be adopted in regard to the control of import of goods. The provision in cl. 5 of the order empowering the licensing authority to attach

a condition to the effect that the goods covered by the licence shall not be disposed of except in the manner prescribed by the licensing authority is a valid provision which comes within the powers conferred by s. 3 of the Act on the Central Government.

State of Bambay v. *F. N. Balsara*, [1951] S.C.R. 682 and *Glass Chatons Importers and Users' Association* v. *Union of India*, [1962] 1 S.C.R. 862, held inapplicable.

Daya v. *Joint Chief Controller of Imports and Exports*, [1963] 2 S.C.R. 73, referred to.

Held, that in the present case the licence has been issued under the Order of 1955. The language of sub-cl. (2) of cl. 5 of that Order is wide and permits the imposition of a condition which was outside sub-cl. (5) of cl. (a) of the Order of 1948. Sub.cl. (4) of cl. 5 makes it obligatory upon the licensee to comply with all the conditions imposed or deemed to be imposed under cl. 5. The licensing authority is competent under the Order to impose the condition that the imported goods be not sold to any person and thus to effect the ordinary rights of the importer. The contravention of any condition of a licence thus amounts to the contravention of the provisions of sub-cl. 4 of cl. 5 of the Order and consequently to the contravention of the order made under the Act and therefore the licensee makes itself liable to punishment under s. 5 of the Act.

East India Commercial Co. v. *Collector of Customs*, [1963] 3 S.C.R. 338 and *C. T. A. Pillai* v. *H. P. Lohia*, A.I.R. 1957 Cal. 83, held inapplicable.

Held, that for contravening the condition of the licence, actual possession of the imported goods is not necessary. Further, the possession of Warden & Co , would be possession of the Association, as the former was its agent to import the goods.

Held, further that the appellant aided intentionally the Association in disposing of the goods through Warden & Co., and therefore abetted the contravention of the condition of the licence. The case appears to be deliberate case of securing import licence with a view to mis-apply the goods imported and therefore, the sentence of three months' rigorous imprisonment and fine of Rs. 2000/- is not severe.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 168 of 1961.

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Abdul Aziz Aminuddin v. *State of Maharashtra*

Appeal by special leave from the judgment and order dated August 3, 1951, of the Bombay High Court in Criminal Appeal No. 99 of 1961.

Shaukat Husain and *P. C. Agarwala*, for the Appellant.

C. K. Daphtary, Solicitor-General of India, D. R. Prem and *R. N. Sachthey*, for the respondent.

1963. February 7. The Judgment of the Court was delivered by

Raghubar Dayal, J.

RAGHUBAR DAYAL, J.—This appeal, by special leave, is against the order of the High Court of Bombay allowing the State appeal and convicting the appellant of the offence under s. 5 of the Imports and Exports (Control) Act, 1947, hereinafter called the Act, for having contravened the Imports (Control) Order, 1955, hereinafter called the Order, and sentencing him to three months' rigorous imprisonment and a fine of Rs. 2,000/- .

The appellant was the Chairman of the Malegaon Powerloom Sadi Manufacturer's Cooperative Association Ltd. hereinafter called the Association. There were six other members of the Association. All the members were powerloom weavers. The appellant, as Chairman of the Association, applied for and obtained the licence dated January 2, 1956, for the import of certain quantity of art silk yarn by the Association. The licence was issued subject to the condition that the goods would be utilised only for consumption as raw material or accessories in the licence-holders' factory and that no portion thereof would be sold to any party. The Association could not arrange for the necessary finances and therefore had the goods imported through Warden & Co., who financed the transaction. Part of the goods received was utilised

in accordance with the condition of the licence, the rest was however sold by the said Warden & Co., as a result of the correspondence ending by a letter dated November 13, 1956, from the appellant as Chairman of the Association to Warden & Co. The relevant portion of this letter is :

> "In this connection we have to inform you that as the price of Art-silk yarn has fallen greatly it is not possible for our Association to take delivery of the balance goods. As such, you are therefore requested to dispose of the balance goods lying with you in such manner that our Association suffers no loss whatsoever, but gets a net profit of at least 4% on these goods."

After the disposal of the goods Warden & Co., did pay to the Association a sum of Rs. 5,040/- by way of profits of the Association.

The appellant and the other members of the Association were prosecuted for committing the offence under s. 5 of the Act. They were acquitted by the trial Court. The State appealed against the acquittal of the appellant alone. The appeal was allowed, with the result that the appellant was convicted of the offence under s. 5 of the Act. He has come up in appeal.

The various contentions raised for the appellant are : (i) The Act was intended for the purpose of prohibiting or controlling imports and exports which, according to s. 2 thereof, meant respectively bringing goods into and taking out of India by sea, land or air, and therefore any provision in the Order providing for the issue of a licence to import goods subject to the condition that the goods covered by the licence be not disposed of except in the manner prescribed by the licensing authority could not be validly made in the exercise of the powers conferred

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on the Central Government under s. 3 of the Act, as such a condition deals with the conduct of the licensee subsequent to the import of the goods. (ii) The Order does not provide for the imposition of the condition in the licence that the licensee is not to sell the imported goods. (iii) The contravention of any condition of the licence does not amount to a contravention of the provisions of the Act or an Order made thereunder and therefore is not punishable under s. 5 of the Act. (iv) The Association was the licensee and therefore any contravention of the condition of the licence would be committed by the Association and not by its Chairman and consequently it would be the Association which should have been tried for the alleged offence under s. 5 of the Act and not the Chairman. (v) The possession of the goods had not passed to the Association and therefore the Association could not be guilty of the offence. (vi) The appellant has no *mens rea* to commit the offence and therefore could not be guilty of the offence. (vii) Lastly, the sentence is severe.

The relevant provisions of the Act and the Order to which reference is necessary may now be quoted. The preamble of the Act reads :

> "An act to continue for a limited period powers to prohibit or control imports and exports.
>
> Whereas it is expedient to continue for a limited period, powers to prohibit, restrict or otherwise control imports and exports."

Section 2 says that in the Act, 'import' and 'export' means respectively bringing into and taking out of India by sea, land or air. Section 3 empowers the Central Government, by order published in the Official Gazette, to make provisions for prohibiting, restricting or otherwise controlling, in all cases or in specified classes of cases, and subject to such exceptions

if any, as may be made by or under the order, the import and export of goods of any specified description. Section 5, the penalty section, provided, at the relevant time, that if any person contravened or attempted to contravene or abetted a contravention of any order made or deemed to have been made under the Act, he would be punishable with imprisonment for a term which may extend to one year, or with fine or with both. The section was amended in 1960 and as a result of the amendment the contravening of any condition of the licence granted under the Order, was also made punishable. The amended provision, however, is not applicable to the present case.

Clause 5 of the Order deals with the conditions of licence. Its relevant provisions read :

> "(1) The licensing authority issuing a licence under this order may issue the same subject to one or more of the conditions stated below :—
>
> (i) that the goods covered by the licence shall not be disposed of, except in the manner prescribed by the licensing authority, or otherwise dealt with, without the written permission of the licensing authority or any person duly authorised by it;
>
> x x x x x x x
>
> (2) A licence granted under this order may contain such other conditions, not inconsistent with the Act or this order, as the licensing authority may deem fit.
>
> x x x x x x x
>
> (4) The licensee shall comply with all conditions imposed or deemed to be imposed under this clause."

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In support of the contention that the power conferred on the Central Government for making provisions for prohibiting, restricting or otherwise controlling import of goods can be exercised only with respect to the actual entry of the goods into the territory of India and not with respect to the control of the imported goods subsequent to their being brought into the territory, reference was made to the case reported as *The State of Bombay* v. *F. N. Balsara* (1). That case dealt with a different matter. It related to the powers under the Bombay Prohibition Act, 1949. The contention was that the Provincial Legislature could not make a law regarding production, manufacture, possession, transport, purchase and sale of intoxicating liquor in the exercise of the powers under Entry 31 of List II, Seventh Schedule to the Government of India Act, 1935, as the word 'import' used in Entry 19 of List I of the same Schedule did not end with mere landing of the goods on the shore or their arrival in the customs house but did imply that the imported goods must reach the hands of the importer and he should be able to possess them. It was argued that the impugned Act dealt with import of goods and therefore encroached upon the legislative powers of the Central Legislature. It was in this context and in view of the principles applicable to the construing of the provisions laying down the legislative limits of different legislatures that it was said at p. 700 .

> "Under the provisions of the Government of India Act, a limited meaning must be given to the word 'import' in entry 19 of List I in order to give effect to the very general words used in entry 31 of List II."

This observation cannot be applicable to the interpretation of the content of the words 'import' and 'export' in the Act in the present case.

In *Glass Chatons Importers & Users' Association* v. *Union of India* (2), it was contended that s. 3

(1) [1951] S.C.R. 682. (2) [1962] 1 S.C.R. 862.

of the Act, insofar as it permitted the Central Government to make the order contemplated by sub cl. (h) of cl. 6 of the order which provides for the refusal to grant a licence if the licensing authority decided to canalize imports and the distribution thereof through special or specialized agencies or channels, was invalid. The contention was repelled, it being held that such a restriction on the right to carry on trade and to acquire property was not unreasonable. The point urged before us was not argued in that case, but the case dealt with the provision in the order relating to the distribution of the imported goods through selected agencies, a stage subsequent to the actual import of goods and the Court held that provision good.

In *Daya* v. *Joint Chief Controller of Imports and Exports* (1), it was held that the provisions contained in cl. 6 (h) of the order, empowering the Chief Controller of Imports and Exports to refuse a licence if the licensing authority had decided to canalize imports and distribution thereof through a special channel or agency, could be made in the exercise of the power conferred on the Central Government under s. 3 of the Act.

It is clear therefore that the power conferred under s. 3 (1) of the Act is not restricted merely to prohibiting or restricting imports at the point of entry but extends also to controlling the subsequent disposal of the goods imported. It is for the appropriate authority and not for the Courts to consider the policy, which must depend on diverse considerations, to be adopted in regard to the control of import of goods. The import of goods can be controlled in several ways. If it is desired that goods of a particular kind should not enter the country at all, the import of those goods can be totally prohibited. In case total prohibition is not desired, the goods could be allowed to come into the country in limited

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quantities. That would necessitate empowering persons to import under licences certain fixed quantities of the goods. The quantity of goods to be imported will have to be determined on consideration of the necessity for having those goods in the country and that again, would depend on the use to be made of those goods. It follows therefore that the persons licensed to import goods up to a certain quantity should be amenable to the orders of the licensing authority with respect to the way in which those goods are to be utilised. If the licensing authority has no such power, its control over the import cannot be effective. It may have considered it necessary to have goods imported for a particular purpose. If it cannot control their utilisation for that purpose, the imported goods, after import, can be diverted to different uses, defeating thereby the very purpose for which the import was allowed and power had been conferred on the Central Government to control imports. It is therefore not possible to restrict the scope of the provision about the control of import to the stage of importing of the goods at the frontiers of the country. Their content is much wider and extends to every stage at which the Government feels it necessary to see that the imported goods are properly utilised for the purpose for which their import was considered necessary in the interests of the country.

We are therefore of opinion that the provision in cl. 5 of the Order empowering the licensing authority to attach a condition to the effect that the goods covered by the licence shall not be disposed of except in the manner prescribed by the licensing authority is a valid provision which comes within the powers conferred by s. 3 of the Act on the Central Government.

In support of the second contention that the Order does not provide for imposing the condition

that the imported goods be not sold, reliance is placed on the decision in *East India Commercial Co.* v. *Collector of Customs* (1). In that case, a condition was imposed in the licence prohibiting the importer from selling the imported goods. Sub-cl. (1) of cl. (a) of Notification No. 2/ITC/48 dated March 6, 1948, provided for imposing a condition in the licence to the effect that the importer shall not dispose of or otherwise deal with the goods without the written permission of the licensing authority or any person duly authorised. Sub-cl. (v) of cl. (a) of the Notification provided:

> "that such other conditions may be imposed which the licensing authority considers to be expedient from the administrative point of view and which are not inconsistent with the provisions of the said Act."

The actual condition imposed, however, did not fall under sub-cl. (1) of cl. (a) and was sought to be supported by relying on sub-cl. (v). This Court held that under that clause a licensing authority was competent to impose only such condition as may be expedient from the administrative point of view. This Court further held that prohibiting an importer from disposing of the goods imported affects the rights of that person and therefore such a condition cannot be prescribed in the licence in the absence of a rule permitting that to be done. In the case before us, the licence has been issued under the Order of 1955. The language of sub-cl. (2) of cl. 5 of that Order is wide and permits the imposition of a condition which was outside sub-cl. (v) of cl. (a) of the order of 1948. Sub-cl. (4) of cl. 5 further makes it obligatory upon the licensee to comply with all the conditions imposed or deemed to be imposed under cl. 5. We therefore do not agree with the second contention and hold that the licensing authority is competent under the Order to impose the condition that the

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imported goods be not sold to any person and thus to affect the ordinary rights of the importer.

The third contention too has no force. Sub-cl. (4) of cl. 5 provides that the licensee shall comply with all conditions imposed or deemed to be imposed under that clause. The contravention of any condition of a licence thus amounts to the contravention of the provisions of sub-cl. (4) of cl. 5 of the Order and consequently to the contravention of the Order made under the Act. It follows that if the Association, the licensee, does not comply with the conditions of the licence about use of the goods to be imported, it contravenes the Order made under the Act and makes itself liable to punishment under s. 5 of the Act.

The cases reported as *C. T. A. Pillai v. H. P. Lohia* (1), and *East India Commercial Co.* v. *Collector of Customs* (2), holding that the infringement of a condition in the licence not to sell goods imported to third parties is not an infringement of the Order, are not of help as they deal with the contravention of the conditions of the licence granted under orders dated July 1, 1943 and March 6, 1948 which did not contain a provision comparable with the provisions of sub-cl. (4) of cl. 5 of the Order of 1955.

We accept the fourth contention that it is the Association, the licensee, which alone could contravene the condition of the licence and thus contravene the Order, but do not agree with the fifth contention that it could not be guilty of the offence as it had not got actual possession of the imported goods. For contravening the condition of the licence, actual possession of the imported goods is not necessary. Further, the possession of Warden & Co., would be possession of the Association, as the former was its agent to import the goods.

Re : the sixth point that the appellant had no intention to commit the offence, the finding of the

(1) A.I.R. 1957 Cal. 83. (2) [1963] 3 S.C.R. 338.

High Court is against the appellant. The High Court rightly held him guilty of the offence under s. 5 of the Act on a finding that he intentionally aided the Association, the licensee, in committing the offence under s. 5 of the Act, and thus abetted the contravention of the offence by the Association. The appellant, as Chairman, authorised Warden & Co., to dispose of the goods which the Association did not want to utilise on account of the decline in price. He thus aided intentionally the Association in disposing of the goods through Warden & Co., and therefore abetted the contravention of the condition of the licence to the effect that the goods imported would be utilised by the licensee alone and would not be sold to any other party.

We do not consider that the sentence is severe in the circumstances of the case which indicate that from the very beginning the appellant, as Chairman of the Association, knew that the Association would not be able to utilise all the yarn to be imported under the licence applied for. The fact that Warden & Co., did pay over Rs. 5,000/- to the Association indicates that the goods did fetch a price higher than the price paid for their importation. The case appears to be a deliberate case of securing import licence with a view to mis-apply the goods imported.

We therefore dismiss the appeal.

Appeal dismissed.