

RIB TAPES (INDIA) PVT. LTD. & ANR.

v.

UNION OF INDIA & ORS.

SEPTEMBER 2, 1986

[G.L. OZA AND S. NATARAJAN, JJ.]

Customs Act, 1962;—Section III(m)—Difference in 'value'—Whether could be made basis of breach prior to 1973.

Statutory Interpretation:—Object and Reasons of Bill—Resort to—For intention of Legislature—Permissible.

The appellants, owners of a hoisery factory, imported 27 knitting machines in 1972 under the import licence held by them. According to the Customs authorities the machinery was not new as the licence permitted to import, but was old reconditioned, and that the price shown was much lower than the actual value. After hearing the appellants, the Collector of Customs found that the appellants had committed breach of s. 111(d) and also of s. 111(m) of the Customs Act 1962 and for both the counts he imposed the penalty, which was maintained by the Board. On revision the Central Government reduced the penalty from Rs. 1,47,000 to Rs. 1,000,00 which had been imposed for breach of s. 111(m). A writ petition filed by the appellants was dismissed by the High Court.

In the appeal to this Court, on behalf of the appellants it was contended that a penal provision has to be construed strictly and in absence of specific words requiring 'value' to be mentioned, it could not be inferred that any difference in value could be made the basis of penalty.

On behalf of the respondents it was contended that although the term 'value' was not in s. 111(m) before the 1973 amendment but that will make no difference as even without the term 'value' a mis-description could be interpreted to be a mis-description on the basis of value stated and ultimately the goods found to be of a higher value. By the amendment the Legislature had only tried to explain or clarify the position.

A **Allowing the Appeals, the Court,**

HELD: 1. The impugned orders are set aside and the penalty imposed on the appellants under s. 111(m) read with s. 111(d) of the Customs Act 1962 is quashed. [704A-B]

B 2. Before the amendment in 1973, s. 111(m) did not contemplate any difference in material particulars in respect of value but it referred matters other than the value. [703B-C]

C 3. Unamended s. 111(m) indicated that wherever goods actually imported are different in material particulars than the goods which were shown in the bill of entry or a declaration as contemplated in s. 46 then it will be a breach of s. 111(m). The difference in particulars could be in respect of anything but value, as this sub-clause clearly shows that the difference in value could not be made the basis of breach of this sub-clause before the amendment of 1973, when the term 'value' has been introduced into this sub-clause. [701B-C]

D 4. In order to interpret a particular provision and to infer the intention of the Legislature, the Objects and Reasons stated in the Bill, when it is presented to the Legislature, could be used. [703B]

E 5. The amendment inserting the term 'value' in s. 111(m) cannot be said to be explanatory. [703F]

Union of India & Ors. v. M/s. Rai Bahadur Shree Ram Durga Prasad (P) Ltd. & Ors., [1969] 2 SCR 727, relied upon.

F **CIVIL APPELLATE JURISDICTION:** Civil Appeal No. 172 of 1979

From the Judgment and Order dated 4.4.1978 of the Delhi High Court in Civil Writ No. 261 of 1978.

G B.R. Aggarwala for the Appellants.

O.P. Sharma for the Respondents.

The Judgment of the Court was delivered by

H **OZA, J.** This appeal on special leave arises out of a Judgment of

the Delhi High Court dated 4th April, 1978. The leave is granted on a limited question as regards the question of interpretation of sub-clause (m) of Section 111 of the Customs Act, 1962 ('Act' for short). The appellants imported 27 knitting machines as the appellants owns a hosiery factory in 1972. The appellants held an import licence for import of knitting machinery.

According to the Customs authorities the machinery was not new as the licence permitted to import, but was old reconditioned. The Customs authorities also held that the price shown by the appellant on the basis of invoice was much lower than what the price actually should be. The price shown by the appellant on the basis of invoice was Rs.77441 whereas according to the Customs authorities the price came to Rs.2,98,359. On this basis, a show cause notice was issued and after hearing the appellant, the Collector of Customs Bombay by order dated 29.12.73 found that the appellants had committed breach of Section 111(d) of the Act and also Section 111(m) of the Act and for both the counts the penalty was imposed on the appellants. Under Section 111(d) the penalty imposed was Rs.1,12,000 in lieu of confiscation of goods and for breach Section 111(m) a penalty of Rs. 1.47,000 was imposed under Section 112 of the Act.

Against this order passed by the Collector of Customs, an appeal was filed by the appellants before the Board and the Board maintained the Order passed by the Collector of Customs. On revision, the Central Government reduced the penalty from Rs.1,47,000 to Rs. one lac only. Against this the appellant preferred a writ petition before the Delhi High Court which was dismissed by a Division Bench of the High Court by its judgment dated 4th April, 1978 and aggrieved by this the present appeal has been preferred.

So far as the penalty under Section 111(d) in lieu of confiscation was concerned, the leave has not been granted and it is not disputed that the appellants have taken away the goods after paying the duty and in this appeal therefore we are not concerned with it. The only challenge before us therefore is in respect of penalty of Rs. one lac imposed under Section 111(m) of the Act.

It is not disputed that Section 111(m) of the Act has been amended in 1973 by Act No. 36 of 1973 but this amendment will not be applicable to the present case. Section 111(m) as it stood before the amendment reads as under:

A “Any dutiable or prohibited goods which do not correspond in any material particular with the entry made under this Act or in the case of baggage with the declaration made under Section 77 in respect thereof.”

B and After the Amendment Act 1973 this provision now reads like:

“any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under Section 77 in respect thereof.”

C It is therefore clear that the word ‘value’ was inserted in this provision. Before the insertion of this word ‘value’; Section 111(m) appears to mean that if the dutiable or prohibited goods are imported which do not correspond in any material particular with the entry made under Section 46 of the Act and in case of baggage with the declaration made under Section 77, then alone Section 111(m) could be attracted:

D

Section 46 of the Act provides:

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“46(1) The importer of any goods, other than goods intended for transit or transshipment, shall make entry thereof by presenting to the proper officer a bill of entry for home consumption or warehousing in the prescribed form:

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Provided that if the importer makes and subscribes to a declaration before the proper officer, to the effect that he is unable for want of full information to furnish all the particulars of the goods required under this sub-section, the proper officer may, pending the production of such information, permit him, previous to the entry thereof (a) to examine the goods in the presence of an officer of customs or (b) to deposit the goods in a public warehouse appointed under Section 57 without warehousing the same.

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H

(4) The importer while presenting a bill of entry shall at the foot thereof make and subscribe to a declaration as to

the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, relating to the imported goods.”

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It is in respect of this that Section 111(m) indicated that wherever goods actually imported are different in material particulars than the goods which were shown in the bill of entry or a declaration as contemplated in Section 46 then it will be a breach of Section 111(m). The difference in particulars could be in respect of anything but value, as this sub-clause clearly show that the difference in value could not be made the basis of breach of this sub-clause before the amendment of 1973, when the term 'value' has been introduced into this sub-clause.

It was contended by the learned counsel for the appellants that in fact in the decision of this Court in *Union of India & Ors. v. M/s Rai Bahadur Shree Ram Durga Prasad (P) Ltd. & Ors.*, [1969] 2 SCR 727 this Court considered the question of description and came to the conclusion that a penal provision has to be construed strictly and in absence of specific words requiring 'value' to be mentioned, it could not be inferred that any difference in value could be made the basis of penalty. Whereas learned counsel appearing for the respondents contended that although the term 'value' was not in Sec. 111(m) of the Act before the amendment but that will make no difference as according to him even without the term 'value' a mis-description could be interpreted to be a mis-description on the basis of value stated and ultimately the goods found to be of a higher value. By the amendment the Legislature had only tried to explain or clarify the position and he contended that this was the view taken by the High Court while considering this question.

In *Union of India's* case the Court held:

“If we are to hold that every declaration which does not state accurately the full export value of the goods exported is a contravention of the restrictions imposed by s. 12(1) then all exports on consignment basis must be held to contravene the restrictions imposed by s. 12(1). Admittedly s. 12(1) governs every type of export. Again it is hard to believe that the legislature intended that any minor mistake in giving the full export value should be penalised in the manner provided in s. 23(A). The wording of s. 12(1) does

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A not support such a conclusion. Such a conclusion does not accord with the purpose of s. 12(1).

B It is true that the regulations contained in the Act are enacted in the economic and financial interest of this country. The contravention of those regulations which we were told are widespread are affecting vital economic interest of this country. Therefore the rigour and sanctity of those regulations should be maintained but at the same time it should not be forgotten that s. 12(1) is a penal section. The true rule of construction of a section like s. 12(1) is, if we may say so with respect, as mentioned by C Plowman, J. in *Re H.P.C. Productions Ltd.*—[1962] Ch. Dn. 466 at 473.”

D It is therefore clear that their Lordships relied on the rule of construction holding that penal provision has to be strictly construed and held that where the provision itself did not require the value to be stated for any error in respect of that, no penalty could be imposed. Learned counsel contended that it was because of this decision that the Amendment Act 1973 was passed by the Parliament and the term ‘value’ was inserted in Sec. 111(m) of the Act. Learned counsel referred to Objects and Reasons for the amendment mentioned in the Bill, which resulted in Act No. 36 of 1973. The material words mentioned in the E Objects and Reasons for the amendment as stated in the Bill reads as under:

F “The amendments to these Acts proposed in the Bill mainly seek to make the punishments prescribed thereunder more severe and to make certain other provisions therein with regard to the rules of evidence and procedure with a view to removing the loopholes noticed in the working of these Acts and making their enforcement more effective.

G 2. The notes on clauses explain in detail the various provisions of the Bill.

H —Clause(2). This clause seeks to amend Section 111 of the Customs Act, 1962, with a view to providing for the confiscation of goods in cases of mis-declaration of the value or imported goods irrespective of whether or not such goods

are dutiable or prohibited, in order to cover cases of over-invoiced imports."

It is not in dispute that in order to interpret a particular provision and to infer the intention of the Legislature, the Objects and Reasons stated in the bill, when it is presented to the Legislature, could be used. In this view of the matter it appears that before the amendment in 1973, Sec. 111(m) did not contemplate any difference in material particulars in respect of value but it referred matters other than the value.

It is not disputed that penalty under Sec. 111(m) has been imposed solely on the ground that the price shown by the appellant in the declaration was much less than what was ultimately found by the Department to be the price of imported goods and in respect of this difference of price, it was held that there is a difference in material particulars which brought the matter within the mischief of Sec. 111(m) of the Act. But in view of the fact that the term 'value' was not in Sec. 111(m) before the amendment of 1973 this difference on the basis of value could not be said to be a difference in material particulars within the meaning of the language of Sec. 111(m) and in this view of the matter, the view taken by the authorities could not be maintained.

The High Court in its judgment realising this difficulty observed that this amendment where the term 'value' has now been inserted is merely explanatory and that was what was also contended by learned counsel for the respondents.

It is not in dispute that a penal provision has to be strictly construed and reading Sec. 111(m) before the amendment it is not possible to draw an inference that any difference in material particulars may be referable to 'value'. This argument therefore can not be accepted. The scheme of Sec. 111(m) as it stood then nowhere referred to the difference of value as one of the ingredients which may attract this provision. In such a situation therefore if it was not the specific intention of the provision, a difference in respect of value therefore could not be said to attract this provision and on that basis no penalty could be imposed.

A The appeal is allowed and the orders passed by the Collector, Board, Central Government and the High Court are hereby set aside. The penalty imposed on the appellants under Sec. 111(m) read with Sec. 112 is hereby quashed. The appellant shall be entitled to get refund of the penalty if already deposited. No order as to costs.

B A.P.J. Appeals allowed.