
Motilal Gupta Karta of Kanta International Vs Union of India and others

Appeal No. 520 of 1987

Court: Bombay High Court

Date of Decision: April 22, 1987

Acts Referred:

Customs Act, 1962 " Section 25(1)

Citation: (1988) 16 ECR 535 : (1988) 36 ELT 44

Hon'ble Judges: T.D. Sugla, J; S.P. Bharucha, J

Bench: Division Bench

Judgement

@JUDGMENTTAG-ORDER

Bharucha, J.

The appellant is the Karta of a joint Hindu family which carries on business in the name of Kanta International. This entity

obtained an advance licence to which the provisos of a notification dated 5th April, 1982 issued u/s 25(1) of the Customs Act, 1962, applies. One

of the conditions of that notifications is that the exempted materials covered thereunder shall not be sold or transferred to any person or utilised or

permitted to be utilised or disposed of in any manner without the previous permission of a committee therein mentioned. The entity was found to

have violated this condition. Its explanation to a show-cause notice was found unsatisfactory. The material was confiscated and a penalty imposed.

The appellant filed the writ petition challenging, the confiscation and the penalty. The learned single judge rejected the petition on the ground that an

equally efficacious remedy by way of appeal was available. The learned judge noted the argument that the appeal would not be entertained without

the deposit of the amount of the penalty. He stated that he had been inclined to permit the appellant to furnish a bank guarantee instead of having to

make the deposit but the appellant was unwilling to give the bank guarantee. The learned judge also noted that, in his view, the argument on

constitutionality had no substance. The appeal is on board for admission.

2. It is strange that the notification is challenged as conferring arbitrary powers upon the committee referred to therein but no copy of the

notification is annexed to the petition. It is true that extracts therefrom have been set out in the petition but that is not, plainly, sufficient. However,

even having regard to the extracts, it is reasonably clear that the committee is not invested with unguided and unfettered powers. A perusal of what

is set out in the petition indicates the parameters within which the committee must function in deciding whether or not permission should be given to

the licence-holder. It appears that the point of constitutionality has been taken only in an attempt to prevent this court from relegating the appellant

to an appeal.

3. It was stated that pursuant to representations that had been made, the notification had been amended so that the previous permission of the

committee was not required when the export obligation imposed upon the licence-holder had been fulfilled in advance. It was submitted that the

notification, as amended, was the applicable law at the time of the adjudication. This is an argument upon which we will not comment. It will be

open to the appellant to advance it in the appeal.

4. It was also submitted that the Tribunal which would hear the appeal had no power to order the return of the confiscated material pending the

disposal of the appeal. Assuming that to be so, it is hardly conceivable, in the circumstances, that the Tribunal would make such an order even if it

had such powers.

5. There is no reason, therefore, why the learned Single Judge's order should not be upheld.

6. The appeal is dismissed.