
(1971) CriLJ 1370

Calcutta High Court

Case No: None

United India Minerals
and Others

APPELLANT

Vs

The Assistant Collector
of Customs and Others

RESPONDENT

Date of Decision: Jan. 20, 1971

Acts Referred:

Customs Act, 1962 " Section 111, 112, 113, 114, 130

Citation: (1971) CriLJ 1370

Hon'ble Judges: Sabyasachi Mukharji, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

Sabyasachi Mukharji, J.

The petitioner in this application challenges the show cause notice dated the 8th March, 1967 issued by the

respondent No. 1 and the proceedings thereunder. The petitioner which is a limited company carries on business of mining and exporting mica. In

July and August 1964, the petitioner exported several cases of ""No. 6 Block Spotted Loose Mica Splittings"" of the 1st and 2nd quality to Italy by

s. s. "Malacca". The said goods were exported under four separate shipping bills. On the 4th February, 1964, a Trade Notice was issued by the

Joint Chief Controller of Imports and Exports, Calcutta, whereby exports of some varieties of mica were prohibited and some varieties were

allowed to be exported subject to a minimum f. o. b. price per kg. as specified in the said Trade Notice. The export of mica of varieties other than

those specified in the said Trade Notice could be exported without any restriction as to the minimum f. o. b. prices, "No. 6 Black Spotted Loose

Mica Splittings" of the 1st and 2nd quality were not specified in the said Trade Notice and the same could be exported without any restriction as to

the minimum f. o. b. price. The export of the several cases of "No. 6 Black Spotted Loose Mica Splittings" of the 1st and 2nd quality were duly

authorised by the Joint Chief Controller of Exports, Calcutta, by endorsements made on the respective shipping bills. It appears that at the instance

of the Appraiser, Customs House, Calcutta, some of the cases of the said goods were checked by the Appraiser before permitting export and as it

was found that the goods sought to be exported were in conformity with the declaration made in the said shipping bills, namely, that they were

"No. 6 Black Spotted Loose Mica Splittings" of the 1st and 2nd quality, the endorsements were made by the Appraiser in the shipping bills

indicating the above fact. Copies of the said shipping bills bearing the aforesaid endorsements have been annexed to the petition.

2. The petitioner was served with a show cause notice dated the 8th March, 1967, which is the subject matter of challenge in this Court. By the

said show cause notice the petitioner was asked to show cause why penal action should not be taken against it u/s 114 of the Customs Act, 1962.

The said show cause notice was issued in respect of the said several cases of No. 6 Black Spotted Loose Mica Splittings" of the 1st and 2nd

quality exported by the petitioner under the said shipping bills. The notice has referred to the various correspondence that passed between the

petitioner and the foreign buyers and thereafter it was alleged that export of mica from India was governed by the provisions and/or conditions

stipulated in the Trade Notice No. G-16/64 dated the 4th February, 1964, in terms of which certain varieties of mica were not permitted to be

exported from India at prices below the floor prices stipulated in the said Trade Notice, On reasonable belief that the documents useful for or

relevant to the proceedings under the Customs Act and goods liable to be confiscated, were secreted therein, the office premises of the petitioner

and other connected places were searched by the officers of the customs house in October, 1964 and certain documents were seized. It was

alleged in the show cause notice that in order to circumvent or by-pass the provisions or stipulations contained in the Trade notice and in the

Export Trade control restrictions, deliberate plans and arrangements were drawn up and implemented by the petitioner in collaboration with Italian

agents and Italian buyers whereby the goods covered by the statements contained in the said show cause notice were exported as a result being

misdescribed and misdeclared as black spotted mica splittings. The goods exported were not, according to show cause notice, black spotted mica

splittings of the first and second quality. It was further alleged that the declaration was made to make it appear to the concerned authorities in India

that the said goods belonged to a variety for which no floor prices were applicable. In the premises it was further alleged that goods in question

were exported and declaration to the concerned authorities were made on the basis of prices lower than the floor prices applicable to the actual

goods exported. It was alleged further that there had been no declaration of the full export value that was required to be paid. It was alleged that

Section 12 (1) of the Foreign Exchange Regulation Act, 1947 and the notifications issued thereunder under Clause (3) of the Export Control

Order, 1958 had been violated. It was further alleged that inasmuch as the goods which had been exported were prohibited goods, they had been

exported in violation of the law and as such under provision of Section 113 read with Section 114(1) of the Customs Act, 1962 the said goods

were liable to be confiscated and the petitioner was asked to show cause why penal action should not be taken against the petitioner.

3. It is apparent therefore that in the show cause notice two charges were levelled against the petitioner, - one was contravention of the Foreign

Exchange Regulation Act, 1947 and secondly, that prohibited goods had been exported without a valid order permitting the export and as such

there was contravention of Section 113 read with Section 114 of the Customs Act, 1962. So far as the question of the contravention of Section 12

(1) of the Foreign Exchange Regulation Act is concerned, in view of the decision of the Supreme Court in the case of Union of India (UOI) and

Others Vs. Rai Bahadur Shreeram Durga Prasad (P) Ltd. and Others, it must be held that the Customs Authorities would have no jurisdiction to

proceed in respect thereof and the notice in so far as it dealt with the said charges was without jurisdiction. No arguments were advanced before

me as to indicate that so far as this aspect of the question of the show cause notice was concerned the Customs Authorities would have jurisdiction

to proceed with the show cause notice or that the aforesaid decision of the Supreme Court would not be applicable to the facts of this case on this

aspect of the show cause notice.

4. The next allegation that requires consideration in this application is how far the Customs Authorities would have jurisdiction in this case to deal

with the question of the alleged contravention of Section 113 of the Customs Act and the action proposed to be taken u/s 114(1) of the Customs

Act, 1962. The same has been challenged mainly from two different aspects. It was argued, firstly, that orders passed by the Customs Authorities

could not be re-opened in the manner purported to be done without any specific provision in the statute to that effect. It was, secondly, argued that

goods having been permitted to be exported and goods having been exported in pursuance to that permission, Sections 113 and 114 of the

Customs Act would not be applicable in this case. It was urged that as the aforesaid goods had been exported out of India, these could not and

did not come within the definition of the "export goods" as defined in the said Act. In order to decide this controversy it would be relevant to

consider the provisions of the Act. Section 2(19) defines "export goods" as any goods which are to be taken out of India to a place outside India.

Section 2(25) defines "imported goods" as goods brought into India from a place outside India but does not include goods which have been

cleared; for home consumption. Section 2(14) states that dutiable goods mean any goods which are chargeable to duty and on which duty has not

been paid. Section 2(33) deals with prohibited goods and states that prohibited goods mean any goods the import or export of which is subject to

any prohibition under the said Act or any other law for the time being in force but do not include any such goods in respect of which the conditions

subject to which the goods are permitted to be imported or exported have been complied with. Section 47 deals with clearance of goods for home

consumption and states that where the proper officer is satisfied that any goods entered for home consumption are not prohibited goods and the

importer has paid the import duty, if any, assessed thereon and any charges payable under the said Act in respect of the same, the proper officer

may make an order permitting clearance of the goods for home consumption. Section 50 of the said Act deals with the entry of goods for

exportation and it would be relevant to set out the provisions of Section 50 and Section 51:

50. (1) The exporter of any goods shall make entry thereof by presenting to the proper officer in the case of goods to be exported in a vessel or

aircraft, a shipping bill, and in the case of goods to be exported by land, a bill of export in the prescribed form.

(2) The exporter of any goods, while presenting a shipping bill or bill of export, shall at the foot thereof make: and subscribe to a declaration as to

the truth of its contents.

51. Where the proper officer is satisfied that any goods entered for export are not prohibited goods and the exporter has paid the duty, if any,

assessed thereon and any charges payable under this Act in respect of the same, the proper officer may make an order¹ permitting clearance and

loading of the goods for exportation.

5. Section 130 deals with the powers of revision by the Board. Section 131 deals with the powers of revision by the Central Government and

Section 152 deals with delegation of powers by the Central Government. The other relevant section which it is necessary to consider is Section

113. Section 113 states that certain export goods shall be liable to confiscation. Thereafter the different categories have been mentioned. My

attention was drawn to Clause (d) of Section 113 which reads as follows: "any goods attempted to be exported or brought within the limits of any

customs area for the purpose of being exported, contrary to any prohibition imposed by or under this Act or any other law for the time being in

force". Section 114 provides that any person who, in relation to any goods, -does or omits to do any act which act or omission would render such

goods liable to confiscation u/s 113, or abets the doing or omission of such an act, shall be liable to certain penalties. Section 111 deals with the

confiscation of improperly imported goods. But the section states that the goods mentioned in "the section "brought from the place outside India

shall be liable to confiscation and then gives the different categories of the goods. The section does not use the expression "imported goods".

Section 112 deals with the penalty for improper importation of goods and is more or less in similar terms with Section 114 which deals with the

export.

6. The first question is that after the export of the goods has been permitted by the Customs Authorities after being checked up by the Appraiser of

the Customs House, can the order permitting the export of the goods be reopened? It was urged that there was no power excepting the power of

revision to be exercised by the Customs Authorities within certain stipulated time under certain conditions to review or reopen and recall the order

permitting the export. It was further urged that the authorities under the Customs Act were statutory authorities and the ambit of their powers

should be found within the provisions of the statute. Reliance was placed on the observations of the learned Judge in the case of Rai Bahadur

Shreeram Durga Prasad Private Ltd. and Others Vs. The Union of India (UOI) and Others, . It has to be remembered that the said decision

ultimately went to the Supreme Court as mentioned hereinbefore; but this aspect of the question was not canvassed before the Supreme Court and

the Supreme Court had no occasion to pronounce its views on this aspect of the -question. The observations relied upon are as follows: ""But

assuming that this was a proceeding permitting the export, and, subsequently the customs authority discovers facts which would show that the

permission was obtained by the practice of any fraudulent representation. Section 190-A is important, as embodying the power of the Chief

Customs authority to rescind such permission"". The aforesaid observations do not indicate that the contention that apart from the provisions of

Section 190-A of the Customs Act, there would be no power to pass the order which in fact would be recalling the previous order of the customs

authorities was not canvassed before the learned Judge. It is apparent, however, that -there is no express power authorising the respondent No. 1

or the officers of the Customs to recall or revise any previous order permitting export. The statutory authorities cannot be credited with any

inherent power unless such inherent power is necessary and incidental corollary to the powers given to them. Mr. Banerjee, learned Counsel for

the respondents, contended before¹ me that there could not be any stoppel against statute. He urged therefore that if at any point of time goods

had been exported upon fraudulent declaration or by practising fraud or by inducing the Customs Authorities into a false belief then the Customs

Authorities would have power to reopen such order. I am, however, of the opinion that the principle that there is no estoppel against the statute is

quite distinct from the question whether a particular statutory authority will have jurisdiction to reopen a particular order or revise a particular

order. The export or import of any goods in contravention of the statute cannot be regularised by the fact that there is no estoppel against the

statute; but that illegal action by a party again would not be amenable to be corrected by the authorities unless there is a provision or power to the

same effect. I have not been able to find any such power specifically in the statute. I am also of the opinion that it cannot be accepted that power to

revise or recall the previous order in the manner indicated is incidental to or consequential of the powers already given. A reference to other fiscal

statutes in the country would make the position clear. That being so, it cannot come within the inherent powers given to the respondent No. 1 or

the Customs Authorities. This question, however, has to be considered not in the abstract but in the context of the facts of this case. Certain

decisions were referred to me for the proposition that statutory authority should not be credited with inherent power in cases of this type unless

there is specific provision for it. In the view, I have taken it is not necessary for me to discuss those cases in detail.

7. The question again in this case has to be considered in the background of Section 113. It is, therefore, necessary to consider the question

whether the goods which had been exported pursuant to the orders issued by the Customs Authorities can be considered ""export goods"". In terms

of definition given of the ""export goods"" - goods which have left India, cannot, in my opinion come within the definition of ""export goods"" u/s 2(19)

of the Customs Act. It has to be noted that Section 2(19) of the Customs Act is not an inclusive definition but is an exhaustive one. The definition

does not merely state that the export goods would include goods which have been taken out of India. Furthermore, goods which have been taken

out of India have not been included in the definition of the export goods. In this connection, it is significant to bear in mind the distinction between

the ""export goods"" and the ""imported goods"". In order to be liable to confiscation the goods in question must come within the definition of the

export goods"" and as the said goods had been exported pursuant to the permission granted by the Customs Authorities, they cannot come within

the definition of the ""export goods"" as contemplated in the Customs Act. Mr. Banerjee, the learned Counsel for the respondents, contended that

Clause (d) of Section 113 was as an indication that goods in question would also come within this definition and they would be liable to

confiscation. Mr. Banerjee further contended that liability to confiscation should be adjudged not at the time when the notice to show cause was

given or at the time of adjudication but when the offence was committed and Mr. Banerjee submitted that Clause (d) indicated that attempting to

export goods in violation of the provisions of the Act or the permission would make the goods liable to confiscation at that point of time. Mr.

Banerjee drew my attention to several decisions of this Court. He first relied on the decision in the case of Best and Co. Vs. Additional Collector

of Customs and Another, , Mr. Banerjee placed reliance on the observations of the Division Bench appearing at page 482. It was argued by

learned Counsel in the aforesaid case that the Customs Authorities had no right to initiate proceedings for breach of the terms and conditions of the

licence. It was further urged that the penalty for breach of condition was provided in the condition itself and that penalty alone could be imposed. It

was further argued before the learned Judges that the clearance having been allowed long before the proceedings u/s 167(8) of Sea Customs Act,

1878 proceedings could not be started at all under the provision. It has to be noted that the aforesaid observations of the Division Bench were

obiter inasmuch as their Lordships of the Division Bench had come to the conclusion that the respondent No. 1 in that case had no authority on

other grounds to initiate the proceedings. Secondly it has to be noted that the said case was dealing with the question of import. The provisions of

Section 167 (8) of the Sea Customs Act, 1878 are significantly different from the present provisions with which I am concerned. Indeed in the

present case the relevant provisions dealing with the import is with Section 111 and the liability to confiscation as noticed in Section 111 attaches

to the fact of the goods have been brought from any place outside India. Furthermore, Clause (d) of Section 111 is significantly different. Said

Clause (d) reads: ""Any goods which, are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of

being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force"". It is therefore clear that the

goods which are brought to India and which have been permitted to be brought in India by a valid order of the Customs Authorities in view of the

wordings of Section 111 read with Clause (d) of Section 111 would still incur the liability of confiscation and as such could be confiscated even

when they had been permitted to be imported to India pursuant to any valid order of importation. The next case upon which reliance was placed

was the judgment of B. C. Mitra, J. in the case of Sheikh Mohammed Sayeed Vs. Assistant Collector of Customs for Preventive (I) and Others, .

That again is a case of importation of goods and Mr. Banerjee also drew attention to the decision in the case of Lakshminarayan Ramniwas Vs.

Collector of Customs and Others, . In this case D. N. Sinha, J. (as his Lordship then was) was concerned with the provision of Section 167 (8) of

the Sea Customs Act, 1878 and was concerned with the question whether after the goods had been removed out of customs barrier in pursuance

of the order of clearance u/s 89 - Customs Authorities would still be competent to impose personal penalty. The learned Judge came to conclusion

that the Customs Authorities had the power. As mentioned hereinbefore the said case was concerned with the import of the goods and the

question of imposition of penalty in respect of the importation of goods in violation of the provisions of the Act stands on a different footing in view

of the provisions, of relevant sections under the present Customs Act, 1962. In view of the aforesaid distinction, I am of the view that Mr.

Banerjee cannot get much assistance from the aforesaid observations in the said cases. The argument of Mr. Banerjee that the liability to

confiscation has to be adjudged at the time when the goods were attempted to be exported is attractive but on a closer examination, I find myself

unable to accept the same specially in view of the provision of Section 114. Section 114 deals with any person who, in relation to any goods, does

or omits to- do any act which act or omission would render such goods liable to confiscation. That liability to confiscation must be at the time of

adjudication. The section does deal with acts which ""would have rendered such goods liable to confiscation"". Reading the expression ""export

goods"" in conjunction with Clause (d) of Section 113 and the definition of ""export goods"" Riven u/s 2(19) and bearing in mind the distinction in

language between Clause (d) of Section 111 of the Customs Act and Clause (d) of Section 113 of the Act and furthermore in view of the

provision of Section 114 of the Customs Act it is not possible to accept Mr. Banerjee's contention that the goods which have been permitted to

be exported by the orders of the Customs Authorities could still be proceeded against or could still be classed as ""export goods"" and would still

suffer the liability of confiscation. In the aforesaid view of the matter, in view of the absence of any specific power giving the Customs Authorities

the right to reopen the orders passed and in view of the language in Sections 113 and 114, I am of the opinion that in this case the Customs

Authorities would have no jurisdiction to proceed to investigate the alleged offences committed u/s 113 read with Section 114 of the Customs Act.

Mr. Banerjee drew my attention to a Division Bench judgment of this Court in the case of Bibhuti Bhusan Bag and another Vs. I.J. Rao and others,

to which I was a party. This question, however, does not appear to have been agitated before the Division Bench and we had no occasion to

express any opinion on this question. Furthermore, the aforesaid case was concerned with the question of import of goods.

8. Mr. Chatterjee, learned Counsel for the petitioner, drew my attention to the decisions in the cases of Harbhajan Singh Vs. Karam Singh and

Others, and Ittavira Mathai Vs. Varkey Varkey and Another, . But in the view, I have taken, it is not necessary for me to discuss these cases in

detail. Mr. Chatterjee also drew my attention to the cases of Tolaram Relumal and Another Vs. The State of Bombay, . W.H. King Vs. Republic

of India and Another, and the case of V.S. Menon Vs. Union of India (UOI), for the argument that where two constructions are possible, the

construction which is more favourable towards the citizen should be favoured. In the view I have taken on the construction of the section, it is not

necessary for me to discuss the aforesaid cases in detail.

9. In the aforesaid view of the matter it must be held that two matters mentioned in the show cause notice namely, contravention of Section 12 (1)

of the Foreign Exchange Regulation Act, 1947 read with Section 3 of the Export Import Control Order and alleged contravention of Section 113

read with Section 114(i) of the Customs Act] were without jurisdiction.

10. In the premises, the said show cause notice dated 8th March, 1967 and the proceedings thereunder are quashed and the respondents are

restrained from giving any effect to the said proceedings. Let writs in the nature of Certiorari and Mandamus issue accordingly and the rule nisi is

made absolute to the extent indicated above. There will be no order as to costs.