IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.1802 of 1989
Date of decision: 17th March, 2020

Union of India & others

… Appellant

Versus

M/s Tuli Tops

… Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Sameer Kaushal, Advocate for
Mr. Amit Goyal, Advocate, Sr. Standing Counsel
for the appellants.

Mr. O.P. Goyal, Senior Advocate with
Ms. Lavish and Mr. Sanjeev K. Sharma, Advocates
for the respondent.

FATEH DEEP SINGH, J.

Then plaintiff, M/s Tuli Tops filed against Union of India and others including the Assistant Collector, Central Excise and Customs (then defendants) a suit seeking decree of mandatory injunction directing the defendants to deliver 58 bales, 76 bales and 61 bales respectively of the goods amenable to customs duty detailed in the plaint. The story of the plaintiff is that the firm deals in import of white synthetic thread waste and falls under the category of small scale unit, and alleged that the defendants refused to make delivery of the goods to the plaintiff in spite of having a valid import code dated 06.09.1982 and thus, was entitled to import of goods for use in its manufacturing unit. It is claimed that the plaintiffs have placed an order to M/s R.S.M. Company USA for the supply of acrylic cotton system spun thread waste which was to be shipped to India and reach Bombay port in the month of June 1984. Alleging that when the plaintiffs approached the warehousing authority after getting no objection certificate, the goods were transferred to Central Warehousing, Ludhiana, at that time the rate of customs duty was 100 % ad-valorem but through Notification No.159/84 dated 22.05.1984 it was suddenly enhanced to 150% plus ₹ 30/- per kg besides auxiliary duty @ 35% ad-valorem. Due to increased customs duty, the plaintiffs could not take the delivery of the goods and when the plaintiffs failed to do so, a sum of ₹ 3,000/- was imposed as penalty on 04.02.1985. Though the plaintiffs claim that they filed a writ petition before the Supreme Court but the officers of the defendants pressurized them and compelled to make their goods surrender and thus, claimed that the plaintiffs were entitled to the goods in question which the defendants have refused to hand back after the rate of 100% ad-valorem customs duty was reduced and hence the suit in question.

The defendants took the plea that the plaintiffs themselves have surrendered the goods in terms of Section 23(3) of the Customs Act vide letter dated 10.12.1985 and therefore, no cause for the plaintiffs to file the suit was made out and further claiming that the goods in question were disallowed for clearance by the Collector, Central Excise and Customs in terms of Section 23 of the Customs Act and therefore, goods became property of the department and hence the Government. The trial Court framed the following issues:-

1. Whether the plaintiff surrendered the goods under Section 23(2) of the Customs Act as alleged? OPD
2. Whether the plaintiff is entitled to the mandatory injunction prayed for? OPP
3. Whether this Court has no jurisdiction to try this suit? OPD
4. Whether the suit is not competent without notice u/s 80 CPC? OPD
5. Whether the suit is not properly valued for the purpose of Court fee and jurisdiction? OPD
6. Relief.

The plaintiffs examined PW1 Gopal Dass, PW2 Inderjit Kumar, PW3 S.B.S. Matharu, PW4 Dilbag Singh Assistant from Warehousing Corporation, PW5 Rajnish Kumar attorney of the plaintiff and in the process proved documents Ex.P1 to Ex.P4, PW5/1 to PW5/14 and PW5/A. However, no witness of the defendants was examined though they had confronted the witnesses of the plaintiff with certain documents relied upon by them. The Court of learned Senior Sub Judge, Ludhiana vide judgment dated 05.09.1988 dismissed the suit of the plaintiff. The Court of learned Additional District Judge, Ludhiana through impugned findings dated 08.03.1989 allowed the appeal and that is how the appellant Union of India has come up in this regular second appeal.

In view of the recent pronouncement in **'Kirodi (since deceased) through his LR vs. Ram Parkash & others' Civil appeal No.4988 of 2019; SLP(C) No.11527 of 2019 decided on 10.05.2019,** the Supreme Court of India has clearly held under Section 41 of the Punjab Courts Act, 1918 which has its application to the States of Punjab and Haryana, that there is no necessity of framing substantial question of law for disposal of an appeal.

Upon hearing Mr. Sameer Kaushal, Advocate appearing on behalf of Mr. Amit Goyal, Advocate, Sr. Standing Counsel for the appellants; Mr. O.P. Goyal, Senior Advocate assisted by Ms. Lavish and Mr. Sanjeev K. Sharma, Advocates for the respondent and perusing the records of the case.

It is the own admitted stand of the plaintiffs that on account of increase in the ad-valorem customs duty they did not exercise their option to get back the goods and have rather relinquished their right over the goods by giving a letter in writing to this effect. It is there in the stand of the defendants that the Collector, Central Excise and Customs vide his letter dated 25.02.1986 disallowed clearance of the goods on payment of duty as the title of the goods passed on to the customs department in terms of Section 23 of the Customs Act and therefore, the goods became the property of the Government on account of relinquishment of the title over the goods by the plaintiff. More so, Section 128 of the Customs Act 1962 provides remedial action against such orders by way of appeal to the Commissioner (Appeals).

To the very specific query of the Court, learned counsel for the respondents could not show any such document or evidence that they have availed off the remedy provided under the Customs Act. The Customs Act which being a special Act has provided remedial action against the orders of the authorities and which the plaintiffs failed to have recourse to and therefore, having failed to exhaust the departmental remedies provided under the Act, the plaintiffs to the mind of this Court cannot have resort to general provisions by way of filing civil suit seeking mandatory injunction. More so, even in the suit the plaintiffs have not challenged the letter dated 25.02.1986 by which the Collector, Central Excise and Customs disallowed clearance of the goods, therefore, by resorting to such a suit the plaintiffs cannot bypass the administrative order which was never put to challenge either in the hierarchy of the Act or even in the suit. The learned trial Court has rightly held while deciding issues No.1 to 3 that since plaintiffs have surrendered the goods in terms of Section 23(2) of the Customs Act and therefore, are not entitled to any mandatory injunction nor have ever availed of the remedy provided by way of appeal under the Customs Act. In the impugned findings the learned first appellate Court has failed to appreciate this important aspect of the evidence and the admitted facts and by mis-construing the truth on the records has arrived at a totally perverse and illegal finding purely on the grounds that the act of the department for not supplying the orders was mala fide and that is how the decision stood reversed. More so, the plaintiff had admittedly filed writ petition challenging the enhancement of the ad-valorem customs duty but nothing has been placed on record as to the fate of the said writ petition though accepted in arguments to have been withdrawn and therefore, by simple analogy the department is supposed to levy the customs duty as per the notification of the Government and the plaintiff is bound to pay the same.

Since the plaintiffs have initially surrendered their right and claim over the goods, now they cannot reverse their stand and re-claim the same after inordinate delay without assigning any sufficient condonable reasons for the same. Rather what appears is that the suit filed by the plaintiffs is an afterthought belated machination by misuse of the process of the Court. The impugned findings reversing the judgment of the trial Court are highly erroneous and need to be set aside by way of acceptance of the instant appeal. The appeal stands allowed in those terms.

(FATEH DEEP SINGH)
JUDGE

March 17, 2020
rps

Whether speaking/reasoned Yes/No
Whether reportable Yes/No