



WEB COPY

W.P.No.46303 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.11.2024

PRONOUNCED ON : 25.11.2024

CORAM:

**THE HON'BLE DR.JUSTICE ANITA SUMANTH
AND
THE HON'BLE MR.JUSTICE G.ARUL MURUGAN**

**W.P.No.46303 of 2002
and W.P.M.P.No.67416 of 2002**

M/s.Atlanta Trading Company,
Rep. by its Partner S.Rajendran
K-35, Industrial Estate,
Ambathur, Chennai - 600 058.

...

Petitioner

versus

- 1.Union of India,
Rep. by its Secretary,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi - 110 001.
- 2.The Customs, Excise, Gold (Control)
Appellate Tribunal,
Shastri Bhawan Annex Building,
26, Haddows Road,
Chennai - 600 006.
- 3.The Commissioner of Customs &
Central Excise,
No.1, Williams Road, Cantonment,
Trichy - 620 001.
- 4.The Commissioner of Customs,



Custom House,
New Harbour Estate,
Tuticorin.

...

Respondents

WEB COPY

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus, calling for the records of the second respondent bearing Order No.2991/97, dated 18.11.1997 in Appeal No.C/726/97 in respect of 5 containers of poppy seeds containing 67,500 kgs, bearing Bill of Entry No.106, dated 10.04.1997 and quash the said order and direct the fourth respondent to refund the redemption fine and penalty paid by the petitioner as per the orders of the second respondent for release of the goods.

For Petitioner : Mr.J.Subash
for Mr.A.K.Jayaraj

For Respondent Nos.1, 3 & 4 : Ms.Anu Ganesan
Junior Panel Counsel

For Respondent No.2 : Tribunal

ORDER

[*Order* of the Court was made by **G.ARUL MURUGAN, J.**]

The petitioner company had imported 67,500 kgs of poppy seeds under a bill of lading dated 18.03.1997 and had filed a bill of entry No.106 dated 10.04.1997, through their Customs House Agent, M/s.Diamond Shipping Agencies, Tuticorin.



WEB COPY

2. Since the poppy seeds is classified as restricted items as per the EXIM Policy 1992-1997 and the import of the poppy seeds by the petitioner was without any valid import licence, a show cause notice came to be issued on 28.05.1997 calling for explanations, as to why the goods shall not be confiscated under Section 111(d) of the Customs Act, 1962 [hereinafter referred to, as 'the Act'] and further a penalty should not be imposed under Section 112(a) of the Act.

3. The petitioner in their reply dated 14.06.1997 had contended that only under the impression that the poppy seeds could be freely imported under open general licence and further since they were used as an ingredients for medicine, they had imported the same from Afghanistan and they had requested to take a lenient view and allow the goods to be cleared on payment of a nominal fine.

4. Pursuant to the enquiry conducted, the adjudicating authority / third respondent by Order No.4/97, dated 03.09.1997, confiscated the imported goods valued at Rs.11,19,973.50 and gave an option to the petitioner under Section 125 of the Act to redeem the confiscated goods on



payment of redemption fine of Rs.25,00,000/- in lieu of confiscation.

Further, a penalty of a sum of Rs.2,00,000/- was also imposed.

WEB COPY

5. The order of the adjudicating authority was appealed before the Customs, Excise and Gold (Control) Appellate Tribunal (CEGAT) and the Tribunal, by order dated 18.11.1997, by taking note of their earlier decision arrived at by the Tribunal in fixing the cost in respect of similar consignment of poppy seeds, while dismissing the appeal, had modified the redemption fine at 145% of the CIF value from the original 210% of the CIF value fixed by the adjudicating authority, however, confirming the penalty in toto. Assailing the orders of the Tribunal, the petitioner had preferred the above writ petition.

6. When the writ petition was listed for hearing on 03.09.2024, the learned counsel appearing for the petitioner was directed to produce the complete documentation submitted before the Tribunal, to establish the market value of the consignment of poppy seeds imported on 10.04.1997 and it was further recorded that if the materials are not produced, adverse inference will be drawn. But no such documents have been produced and the learned counsel only contended that the value of the poppy seeds arrived at



by the adjudicating authority is not proper and correct market value has not been determined while imposing the redemption fine.

7. Ms.Anu Ganesan, learned Junior Panel Counsel appearing for the respondents 1, 3 and 4 contended that, the adjudicating authority had in fact relied on the price fixed in various forums at the relevant time and had taken the lowest of those values in arriving at the market price, based on which the redemption fine has been imposed. It is her further contention that the Tribunal, by considering the earlier orders wherein the value in respect of the similar consignment of poppy seeds, has in fact modified the redemption fine by reducing it from 210% of the CIF value to 145% of the CIF value. In support of her contentions, the learned counsel relied on the judgment of the Hon'ble Supreme Court in the case of ***Jain Exports Pvt. Ltd. Vs. Union of India*** reported in **1993 (66) E.L.T. 537** and the judgments of this Court in ***Commr. of Customs Vs. Sai Copiers*** reported in **2008 (226) E.L.T. 486** and ***Commissioner of Customs (AIR) Vs. P.Sinnasamy*** reported in **2016 (344) E.L.T. 1154**.

8. Heard the rival submissions of the respective counsels and perused the materials placed on record.



WEB COPY

9. The import of goods into the country are made based on the notified policies and the licenses issued. On import of the goods, the importer shall file a bill of entry for clearance of the imported goods before the Customs authorities. Certain items are classified as restricted items under the EXIM Policy 1992-1997. Any import of the restricted item is not permitted except against a licence or in accordance with the public notice issued in that behalf. If any import of goods on the restricted items is carried out, then the goods are liable to be confiscated under Section 111(d) of the Act.

10. On such confiscation under Section 111 of the Act for importing the goods of a prohibited item, an option is provided to the importer to pay in lieu of the confiscation of such fine as the adjudicating officer thinks fit. Further, the adjudicating officer is also authorised to impose a penalty under Section 112 of the Act not exceeding the value of the goods.

11. For easy reference, the relevant provisions are extracted hereunder:-



“111(d) 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.

.....

112. (a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, shall be liable,-

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty [not exceeding the value of the goods or five thousand rupees] , whichever is the greater;

.....

125. (1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods [or, where such owner is not known, the person from whose possession or custody such goods have been seized,] an option to pay in lieu of confiscation such fine as the said officer thinks fit:

[Provided that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, [no such fine shall be imposed]:



WEB COPY



Provided further that, without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges, payable in respect of such goods.

(3) Where the fine imposed under sub-section (1) is not paid within a period of one hundred and twenty days from the date of option given thereunder, such option shall become void, unless an appeal against such order is pending.”

12. From the above provisions, it is clear that any goods which are imported contrary to any prohibition imposed shall be liable for confiscation. Whenever any such goods are confiscated, the adjudicating officer shall give the owner of the goods the option to pay in lieu of the confiscation such a fine, which shall not exceed the market price of the goods confiscated. Further, the importer shall be liable to pay a penalty not exceeding the value of the goods.

13. In the instant case, the petitioner had imported 67,500 kgs of poppy seeds from Afghanistan through a bill of lading No.TM/TUT/97189



dated 18.03.1997 and on arrival of the goods, had filed a bill of entry

No.106 dated 10.04.1997.

WEB COPY

14. Admittedly, the poppy seeds have been classified as restricted items under the EXIM Policy 1992-1997. On finding that the petitioner had imported the restricted goods without any import licence and contravened Section 111(d) of the Act, a show cause notice dated 28.05.1997 was issued for confiscation of the goods. The petitioner in their reply dated 14.06.1997 had only pleaded inadvertence about the restricted nature of the poppy seeds and further claimed that the poppy seeds were used as ingredients for medicine and covered under Serial No.55 of the consumer goods which were freely importable. The adjudicating authority had conducted an enquiry and had considered all the materials submitted by the petitioner and prices of the poppy seeds fixed in different forums.

15. In fact, the authority had taken note of the price of poppy seeds fixed at Rs.73/- per kg by the Spice Board Journal and the price fixed at Rs.68/- to 70/- per kg in the Economic Times at the relevant time and also had considered the price at Rs.70/- per kg in the local market. The adjudicating authority had taken the lowest of the price i.e. Rs.68/- per kg,



into account for determining the market value of the goods. On valuing the poppy seeds for a sum of Rs.11,19,973.50, the order in original was passed confiscating the goods and an option to redeem the confiscated goods on payment of redemption fine under Section 125 of the Act was given. The adjudicating authority had fixed 210 % of the CIF value, which comes to a sum of Rs.25,00,000/- as redemption fine in lieu of compensation and a penalty of a sum of Rs.2,00,000/- was issued under Section 112(a) of the Act.

16. In the appeal, the Tribunal, by considering the earlier order passed on 16.09.1997, whereby they had fixed a sum of Rs.55/- per kg by considering the market enquiry made at the relevant time and the present consignment also relates to that contemporaneous period, had modified the redemption fine from 210% of the CIF value to 145% of the CIF value, which becomes reduced from Rs.25,00,000/- to Rs.16,23,968/-, but however, the penalty imposed was confirmed.

17. The petitioner was not able to substantiate any materials to show that the actual market price of the poppy seeds at that relevant point of time. In fact, the adjudicating authority, by considering all the materials



available, had taken the lowest value and had fixed the price, as per the market value of the goods during the relevant point of time. Further, the Tribunal, by considering the price fixed in respect to some other consignment during that relevant time by conducting a market enquiry, has reduced the percentage of redemption fine, whereby the market value of the poppy seeds correspondingly gets reduced.

18. At this juncture, it would be appropriate to note that the Hon'ble Supreme Court in the case of ***Jain Exports Pvt. Ltd. Vs. Union of India*** reported in ***1993 (66) E.L.T. 537***, had held that the quantum of redemption fine should depend on the totality of facts and circumstances of each case and it is a discretionary jurisdiction of the authorities under the Act. The *bona fide* action of the assessee by itself cannot entitle him to claim full waiver of fine. The relevant paragraphs are extracted hereunder:-

“9. Before we address ourselves to the question whether the facts and circumstances of this case warrant a total or partial waiver of the redemption fine it is necessary to bear in mind the fact that the fixation of the quantum of the redemption is in exercise of the discretionary jurisdiction of the authorities under the Customs Act and ordinarily this Court, while exercising jurisdiction either under Article 32 or under Article 136 of the Constitution, would be slow to interfere with such an order unless it is shown to be thoroughly arbitrary or whimsical resulting in gross miscarriage of justice. As pointed out above the mere fact that the action of the importers was bona fide will not per se entitle them to a waiver of the entire redemption fine but the Court would have to bear in mind the totality of the circumstances and the benefit if any, derived by the



WEB COPY



importers from the illegal import. It is in this background that we must examine the question whether the Collector's order imposing the redemption fine and the Tribunal's refusal to interfere therewith require interference at our hands in the present proceedings.

10. At the outset we deem it proper to mention that the importers are an experienced Export House well versed in the policies and procedures in regard to the import and export of goods. Their function in the transactions in question was to import the goods as holders of Letters of Authority and pass them over to the licence holders who in turn would dispose of the goods to actual users in accordance with the terms and conditions of the licence. However, it is well established that the consignments in question were sold on high-sea-sale basis under the cover of the Letters of Authority and separate agreements with the licence holders. The importers have not despite the opportunity given to place on record such material as is relevant to the question of bona fides, disclosed information and details regarding the transaction for appreciating why the sale was effected on high seas and the profit if any derived therefrom. The Tribunal has noted:

“However, the appellants, despite the direction from the Delhi High Court to produce relevant details for determining the quantum of redemption fine have not given any details regarding the landed costs and other expenses including the sale price on high sea sale basis for arriving at the appropriate quantum of profit.”

Even during the course of the hearing before us we repeatedly inquired of counsel for the importers to show us from the record whether or not the transactions in question had yielded any profit and, if yes, the quantum thereof but we did not receive a satisfactory reply. In fact as pointed out by the Tribunal the importers had failed to place the said material on record for reasons not difficult to guess. Therefore, even after two opportunities, the first given by the Delhi High Court and the second by this Court by the order under review, the importers have deliberately failed to place this vital information on record. Counsel for the importers requested us to give him time to procure and place the said material on record but we saw no reason to grant further indulgence and permit the importers to do so belatedly when they had failed to do so for no valid reason. Even at this belated stage no particulars regarding the material proposed to be produced were given. Besides such belated production would prejudice the opposite side. That apart, such evidence can have probative value only if produced promptly and not otherwise. It is thus obvious that the failure to produce such vital and material evidence impinges on the claim that the importers had acted in good faith. This single fact in our view is sufficient to non-suit the importers.”



WEB COPY

19. Further in the case of ***Commr. of Customs Vs. Sai Copiers*** reported in **2008 (226) E.L.T. 486**, the Division Bench of this Court by holding that the discretion is vested on the authorities in imposing the redemption fine held that the fixation of redemption fine and penalty is an exercise of discretionary jurisdiction subject to rider of limit prescribed under the statute. The relevant paragraphs are extracted hereunder:-

“9. From the reading of the above provisions, it is clear that the statutory requirement is that the imposition of redemption fine shall not exceed the market price of the goods confiscated, less in the case of imported goods, the duty chargeable thereon. The language employed "shall not exceed" indicates that the authorities under Act are empowered to impose redemption fine less than the market price of the goods confiscated. Thus, a discretion is vested on the authorities with a rider that the imposition of redemption fine should not exceed the market price.

10. Likewise, under Section 112(a) also, the statutory prescription is in the case of goods in respect of which any prohibition is in force under the Customs Act, or any other law the penalty imposable shall not exceed the value of the goods or Rs.5,000/-, whichever is greater. In respect of dutiable goods other than prohibited goods, the penalty could be imposed not exceeding the duty sought to be evaded on such goods or Rs.5,000/- whichever is greater.

11. Here again, the maximum that could be levied is only prescribed. There is no statutory prescription that the penalty should not be reduced by the appellate authority. Before the Tribunal, the importers relied on the earlier order of the Tribunal in the case of Sri Venkatesh Enterprises v. Commissioner of Customs, Chennai 2005 (192) E.L.T. 818, wherein the quantum of redemption fine imposed in lieu of confiscation of second-hand photocopiers valued at Rs.17.7 lakhs was restricted to Rs.2.5 lakhs and the quantum of penalty was restricted to Rs.85,000/-. The same was followed in the case of the respondents also by the Tribunal. The fixation of the quantum of redemption is an exercise of discretionary jurisdiction of the authorities under the Customs Act. The Court can interfere only in the circumstances in which it was demonstrated before it that the order of the Tribunal is thoroughly arbitrary, whimsical and resulting in miscarriage of justice. As already stated, the Tribunal has



WEB COPY



followed its own earlier decision wherein the Tribunal has consistently imposed the redemption fine at 15 percent and penalty under Section 112(a) at 5 percent of the value of the goods, which factum has not been disputed by the counsel appearing for the Department. In the above said view of the matter, we find no question of law, much less a substantial question for entertaining these appeals. Hence, the appeals are dismissed. However, there is no order as to costs. Consequently, connected M.P.Nos.1, 1, 1 and 1 of 2007 in C.M.A.Nos.127 to 130 of 2008 are also dismissed.”

20. Again in the case of ***Commissioner of Customs (AIR) Vs. P.Sinnasamy*** reported in **2016 (344) E.L.T. 1154**, the Division Bench of this Court held that the discretion was on the adjudicating authority to decide on the redemption fine to be imposed and the twin test, to be satisfied in a writ petition is, ‘relevance and reason’. In para nos.55 and 56, it is observed as under:-

“55. Power has to be exercised with regard to the duty arising from the nature of the action to be performed by the adjudicating authority. The conditions on the basis of which the power has to be exercised and the repercussions or consequences of such exercise, in the light of the scheme of the Act, which prohibits smuggling and other acts morefully set out in Section 11 and 11A of the Customs Act, 1962, or any other law for the time being in force, should always be kept in mind, while considering either provisional release or passing an order, on the culmination of adjudicatory proceedings.

56. At the time, when discretion is exercised under Section 125 and if any challenge is made under Article 226 of the Constitution of India, the twin test, to be satisfied is "relevance and reason". In the light of the judgments of the Hon'ble Apex Court and applying the same to the facts of this case and testing the discretion exercised by the authority, on both subjective and objective satisfaction, as to why, the goods seized, cannot be released, when smuggling is alleged and on the materials on record, we are of the view that the discretion exercised by the competent authority, to deny release, is in accordance with law. Interference by the Tribunal is against law and unjustified.”



WEB COPY

21. In view of the above decisions and the provisions as extracted above, it clearly emerges that once a restricted item is imported into the country by contravening Section 111(d) of the Act and the goods are confiscated, then entirely the discretion is vested on the authority to impose the redemption fine, which would be based on the statutory restrictions.

22. Admittedly as discussed earlier, the petitioner had imported the restricted goods of poppy seeds and the adjudicating authority, on confiscation of the goods, only after considering all the available materials had taken the lowest value and fixed the market value of the goods and on its discretion, had imposed the redemption fine within the statutory restrictions. Further, the Tribunal, had in fact modified and reduced the redemption fine by considering the valuation of the goods fixed in respect of some other consignment during the relevant point of time. As such we find no error or any infirmity in the decision arrived at by the Tribunal.

23. In view of the same, this Writ Petition stands ***dismissed***. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.



W.P.No.46303 of 2024



[A.S.M.J.,] [G.A.M.J.,]
25.11.2024

WEB COPY Speaking order / Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No

sri



To

- 1.The Secretary
Union of India,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi - 110 001.
- 2.The Customs, Excise, Gold (Control)
Appellate Tribunal,
Shastri Bhawan Annex Building,
26, Haddows Road,
Chennai - 600 006.
- 3.The Commissioner of Customs &
Central Excise,
No.1, Williams Road, Cantonment,
Trichy - 620 001.
- 4.The Commissioner of Customs,
Custom House,
New Harbour Estate,
Tuticorin.



W.P.No.46303 of



Dr. ANITA SUMANTH, J.
AND
G.ARUL MURUGAN, J.

sri

Pre-Delivery Order made in
W.P.No.46303 of 2002
and W.P.M.P.No.67416 of 2002

25.11.2024