1961

April 12.

THE COLLECTOR OF CUSTOMS, BARODA
v.
DIGVIJAYSINHJI SPINNING & WEAVING MILLS LTD.

(K. SUBBA RAO and RAGHUBAR DAYAL, JJ.)

Import—Confiscation of goods by Collector of Customs—Penalty substituted for confiscation by Board of Revenue, if can be realised by the Collector of Customs—Sea Customs Act, 1878 (VIII of 1878), ss. 167(8), 193.

The respondent imported goods of higher value than what was granted under his licence. The Collector of Customs ordered the goods to be confiscated under s. 167(8) of the Sea Customs Act, 1878 and in lieu of confiscation gave an option to the respondent to a fine. On appeal the Central Board of Revenue set aside the order of the Collector of Customs and instead of it imposed a penalty. The respondent did not pay the penalty and the Collector of Customs took proceedings under s. 193 of the Act for the recovery of the penalty in pursuance of which a Magistrate issued warrants of attachment against the respondent holding that the Collector of Customs could validly realise the penalty under s. 193 of the Act. The Sessions Judge dismissed the respondents application in revision but the High Court held that as the penalty was imposed by the Central Board of Revenue the Collector of Customs could not realise the amount of the penalty under s. 193 of the Act and also held that the order of the Central Board of Revenue commuting the confiscation to penalty was not without jurisdiction. On appeal by special leave,

Held, that the Central Board of Revenue which is the "Chief Customs Authority" cannot be called an "officer of Customs", and the order of the Chief Customs Authority imposing a penalty for the first time cannot be treated to be an order of the Collector of Customs within the meaning of s. 193 of the Sea Customs Act, 1873, and as such the Collector of Customs could not realise the penalty imposed by the Central Board of Revenue.

Rangaswamy v. *Alagayammal*, A.I.R. (1915) Mad. 1133, *Kristnamachariar* v. *Mangammal*, (1902) I.L.R. 26 Mad. 91 and *Lachmeshwar Prasad Shukul* v. *Keshwar Lal Chaudhuri*, (1940) F.C.R. 84, held not applicable.

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 74 of 1960.

Appeal by special leave from the judgment and order dated August 8, 1957, of the Bombay High

Court at Rajkot in Criminal Revision Application No. 10 of 1956.

B. K. Khanna and *T. M. Sen*, for the appellant.

Rameshwar Nath, *S. N. Andley* and *P. L. Vohra*, for the respondent.

1961. April 12. The Judgment of the Court was delivered by

SUBBA RAO, J.—This appeal by special leave is against the order of the Bombay High Court at Rajkot setting aside the warrants of attachment issued by the First Class Magistrate, Jamnagar, for enforcing the penalty imposed on the respondent under s. 193 of the Sea Customs Act, 1878, (hereinafter called the Act).

The material facts may be briefly stated. The respondent is Digvijayasinhji Spinning & Weaving Mills Limited, Jamnagar. It imported 275 cases of second-hand looms under one consignment and 175 cases of second-hand textile waste to plant machinery under another consignment from Pondicherry. The respondent held licences for import of goods of a lesser value than the value of these consignments. The Collector of Customs, Baroda, ordered the said goods to be confiscated under s. 167(8) of the Act; and in lieu of confiscation an option was given to the respondent to pay a fine of Rs. 22,918 and Rs. 16,000 in respect of the two consignments. Further, on the ground that the respondent had understated the value of the goods imported under the first consignment, the appellant imposed a penalty of Rs. 500 under s. 167(37)(c) of the Act. Against the said order, the respondent preferred two appeals to the Central Board of Revenue and the said Board, by its order dated January 15, 1954, set aside the orders of the appellant and instead imposed a penalty of Rs. 22,918 in regard to the first consignment and Rs. 16,000 in regard to the other under s. 167(8) of the Act; but the penalty of Rs. 500 was however maintained. In revision the Government of India modified the order of the Central Board of Revenue by cancelling the penalty of Rs. 500 and in

1961

Collector of Customs, Baroda v. Digvijaysinhji Spinning & Weaving Mills Ltd.

Subba Rao J.

other respects it confirmed the order of the said Board. The respondent cleared the goods on executing a bond in favour of the appellant. As the respondent did not pay the penalty, the appellant, acting under s. 193 of the Act, notified the default in writing to the First Class Magistrate at Jamnagar so that the penalty might be recovered in the manner prescribed by the said section as if the said penalty was a fine inflicted by the Magistrate himself. On the said requisition the Magistrate issued warrants of attachment against the respondent, but the latter filed a petition before him for the cancellation of the said warrants on the ground that the order of the Central Board of Revenue was illegal and also on the ground that the appellant had no jurisdiction to take action under s. 193 of the Act. The Magistrate, by his order dated May 8, 1956, held that the appellant could validly realize the said amounts under the machinery provided under s. 193 of the Act. Against the said order of the Magistrate the respondent preferred an appeal to the Sessions Judge, Halar, Jamnagar, but it was later converted into a revision and was dismissed. On revision to the High Court against that order, the High Court held that as the penalty was imposed by the Central Board Revenue, the appellant could not realize the said amounts under 193 of the Act; it also expressed an opinion that the final order of the appellate authority was not without jurisdiction as it was not shown that consent of the owner of the goods ordered to be confiscated had not been obtained by the Central Board of Revenue before the order commuting the confiscation to penalty was passed. In the result, the High Court set aside and cancelled the warrants of attachment issued by the Magistrate. Hence the appeal.

Learned counsel for the appellant broadly contended that s. 193 of the Act should be liberally construed with a view to effectuate the intention of the legislature and if so construed the order of the Central Board of Revenue made in substitution of that of an officer of Customs could be enforced by the latter officer under the said section. On the other hand,

learned counsel for the respondent argued that the Central Board of Revenue was not an officer of Customs within the meaning of s. 193 of the Act and therefore its order could not be enforced under the said section by an officer of Customs; and that even if the Board, being the Chief Customs Authority, could be considered to be an "officer of Customs" within the meaning of those words, the said Chief Customs Authority only could enforce the said order and not the Collector of Customs.

1961

Collector of Customs, Baroda
v.
Digvijaysinhji Spinning & Weaving Mills Ltd.

Subba Rao J.

To appreciate the rival contentions and to provide a satisfactory solution to the problem presented it is necessary to read the relevant provisions of the Act, not only to understand the scheme of the Act but also to construe the provisions of s. 193 thereof in the light of the scheme disclosed by the said provisions. It is one of the well established rules of construction that "if the words of a statute are in themselves precise and unambiguous no more is necessary than to expound those words in their natural and ordinary sense, the words themselves in such case best declaring the intention of the legislature". It is equally well settled principle of construction that "Where alternative constructions are equally open that alternative is to be chosen which will be consistent with the smooth working of the system which the statute purports to be regulating; and that alternative is to be rejected which will introduce uncertainty, friction or confusion into the working of the system." With this background and having regard to the aforesaid two principles of construction, let us at the outset scrutinize the scheme of the Act. Section 3 defines "Chief Customs-authority" to mean the Central Board of Revenue. "Customs-collector" is defined to include "every officer of Customs for the time being in separate charge of a custom-house, or duly authorized to perform all, or any special, duties of an officer so in charge." Section 19 confers a power on the Central Government to prohibit or restrict the importation or exportation of goods by sea or by land. Section 167 prescribes the various punishments for offences under the Act. Section 167(8) says that if any goods, the

1961

Collector of Customs, Baroda
v.
Digvijaysinhji Spinning & Weaving Mills Ltd.

Subba Rao J.

importation or exportation of which is for the time being prohibited or restricted by or under Chapter IV of the Act, be imported into or exported from India contrary to such prohibition or restriction, such goods shall be liable to confiscation; and any person concerned in any such offence shall be liable to a penalty not exceeding three times the value of the goods, or not exceeding one thousand rupees. Under s. 167(37)(c), if it be found, when any goods are entered at, or brought to be passed through, a custom-house, either for importation or exportation, that the contents of such packages have been misstated in regard to sort, quality, quantity or value, such packages shall be liable to confiscation and every person concerned in any such offence shall be liable to a penalty not exceeding one thousand rupees. Section 182, empowers the Collector of Customs to adjudicate whether anything is liable to confiscation, increased rate of duty or any person is liable to a penalty. Section 183 enjoins on such authority to give the owner of goods so confiscated an option to pay in lieu of confiscation such fine as it thinks fit. Section 188 gives a right of appeal from such an order to the Chief Customs Authority who is empowered to pass such order as he thinks fit, confirming, altering or annulling the decision or order appealed against; but under the proviso to that section the said appellate authority cannot make an order subjecting any person to any greater confiscation, penalty or rate of duty than has been adjudged against him in the original decision or order. Every order passed under this section is final subject to the power of revision conferred by s. 191 on the Central Government. Section 190 confers a power on the Chief Customs Authority to remit penalty, increased rate or confiscation in whole or in part; it also enables the said authority, with the consent of the owner of the goods ordered to be confiscated to commute the order of confiscation to a penalty not exceeding the value of such goods. Section 190A gives a power of revision to the Chief Customs Authority against an order of any officer of Customs passed under the Act and enables it to pass such order thereon as it thinks fit. Then comes the

crucial s. 193. As the argument turns upon the provisions of this section, it would be convenient to read the entire section at this stage.

> *Section 193*: "When a penalty or increased rate of duty is adjudged against any person under this Act by any officer of customs, such officer, if such penalty or increased rate be not paid, may levy the same by sale of any goods of the said person which may be in his charge or in the charge of any other officer of Customs.
>
> When an officer of Customs who has adjudged a penalty or increased rate of duty against any person under this Act is unable to realise the unpaid amount thereof from such goods, such officer may notify in writing to any Magistrate within the local limits of whose jurisdiction such person or any goods belonging to him may be, the name and residence of the said person and the amount of penalty or increased rate of duty unrecovered; and such Magistrate shall thereupon proceed to enforce payment of the said amount in like manner as if such penalty or increased rate had been a fine inflicted by himself."

Pausing here, let us recapitulate the gist of the aforesaid provisions. Under the Act the goods, whose importation or exportation is prohibited or restricted by the provisions of the Act, are liable to be confiscated and also the person concerned is liable to a penalty. Even a mis-statement in regard to sort, quality, quantity or value of the goods so imported or exported is an offence and the packages, with their contents, are liable to be confiscated and the person concerned in any such offence is also liable to penalty. The Collector of Customs can make an order confiscating the said goods as well as imposing a penalty on the person concerned. In an appeal against that order, the Chief Customs Authority can modify the said order, but it has no power to increase the burden. It can remit such penalty or confiscation, in whole or in part, but it can also commute the order of confiscation to penalty not exceeding the value of such goods. A person desiring to file an appeal against an order of

1961

Collector of Customs, Baroda v. *Digvijaysinhji Spinning & Weaving Mills Ltd.*

Subba Rao J.

penalty passed by an officer of Customs shall, pending an appeal, deposit in the hands of the Customs-collector at the port where the dispute arises the amount demanded by the officer passing such decision or order; and if he succeeds wholly or in part, the whole or such part thereof, as the case may be, shall be returned to him. The result of the provisions, therefore, is that there would never be a contingency or necessity for an appellate tribunal to enforce payment of penalty imposed by it, for no appeal would be heard by it unless the penalty was deposited as aforesaid.

With this background let us look at the relevant provisions of s. 193 of the Act. Under the said section only an officer of Customs, who has adjudged a penalty or increased rate of duty, can realize the said penalty or rate through the machinery of a Magistrate. The question is whether the Chief Customs Authority is "an officer of Customs" who has adjudged a penalty or rate, as the case may be, within the meaning of s. 193 of the Act. Section 182 of the Act enumerates the different officers of Customs who are empowered to adjudge a question of penalty, but the Chief Customs Authority is not included in that list. Indeed, in s. 182(c) the Chief Customs Authority is empowered to nominate the subordinate officers of Customs to adjudge questions within certain pecuniary limits. That apart, s. 3(a) of the Act defines "Chief Customs-authority" to mean the Central Board of Revenue. The Central Board of Revenue is a statutory authority and, though it can only function through officers appointed to the said Board, it is inappropriate to call it an officer of Customs. In this situation, when under the provisions of the Act there is no scope for realization of any penalty imposed for the first time by the Chief Customs Authority, it would be more in accord with the scheme of the Act to construe the words "an officer of Customs" as an officer of the Customs who is authorized to adjudicate in the first instance on the question of confiscation, increased rate of duty or penalty under s. 182 of the Act. This construction, it is said, would lead to an anomaly of the statute conferring a power on the Chief Customs Authority to

impose a penalty and at the same time withholding from it a procedure to enforce its collection. As we have pointed out, such an anomaly cannot arise under the provisions of the Act, for there is no section which empowers the Chief Customs Authority to impose a penalty higher than that imposed by the Customs Officer.

1961

Collector of Customs, Baroda v. Digvijaysinhji Spinning & Weaving Mills Ltd.

Subba Rao J.

Assuming that the Chief Customs Authority is an Officer of Customs within the meaning of s. 193 of the Act, it had to initiate proceedings under the said section; but in this case the Collector of Customs notified in writing to the Magistrate for recovering the said penalty.

Learned counsel for the appellant contends that an order made by the Chief Customs Authority imposing a penalty shall be deemed in law to be an order made by the original authority, that is, the Collector of Customs and, therefore, the said order for the purpose of enforcement shall be treated as the order of the Collector of Customs. It is said that this legal position would flow from the proposition that an appeal is a continuation of a suit. The said proposition is unexceptionable: see *Rangaswamy* v. *Alagayammal* (1), *Kristnamachariar* v. *Mangammal* (2), *Lachmeshwar Prasad Shukul* v. *Keshwar Lal Chaudhuri* (3). But neither the said decisions nor the principles laid down therein can have any bearing on the question whether an order made for the first time by an appellate authority could in law be deemed to be one made by the original authority. In the absence of any statutory fiction giving rise to that result, it is not permissible to treat the order made by one authority as that made by another authority. If so, it follows that the order of the Chief Customs Authority imposing a penalty for the first time cannot be treated to be an order of the Collector of Customs within the meaning of s. 193 of the Act.

As we have pointed out, the Chief Customs Authority has no power to impose a penalty for the first time under s. 188 of the Act; but it has power under

(1) A.I.R. 1915 Mad. 1133. (2) (1902) I.L.R. 26 Mad. 91, 95-96.
(3) (1940) F.C.R. 84, 103.

1961

Collector of Customs, Baroda v. *Digvijaysinhji Spinning & Weaving Mills Ltd.*

Subba Rao J.

s. 190 of the Act to commute the order of confiscation to a penalty not exceeding the value of the goods confiscated. Though the Chief Customs Authority in its order dated January 15, 1954, did not expressly rely on s. 190 of the Act, it cannot be disputed that it has jurisdiction to pass such an order thereunder subject to the conditions laid down therein. The condition for the exercise of that power is that it should have obtained the consent of the party whose goods were confiscated. The High Court in its order observed that there was nothing before it to show that the consent of the owner of the goods ordered to be confiscated was not obtained before the order of confiscation was commuted to one of penalty by the Chief Customs Authority. If that be taken as a finding the question of the legal effect of an order of commutation would arise for consideration. Would such an order be deemed to be made in substitution of that of an original authority? Could it be said that the commuted sentence shall be deemed in law a sentence imposed by the original tribunal? But these questions need not detain us, as we are not satisfied on the material placed before us that the condition of consent has been fulfilled in this case. The High Court in effect drew a presumption in favour of the regular performance of an official act. But this presumption is only optional. In a case like this when the validity of an order depends upon the fulfilment of a condition, the party relying upon the presumption should at least show that the order on the face of it is regular and is in conformity with the provisions of the statute. But in the present case the order of the Chief Customs Authority *ex facie* does not show that it was made under s. 190 of the Act. Indeed it is purported to have been made under s. 167(8) of the Act. If as a matter of fact the said Authority made the order of commutation with the consent of the owner of the goods it would have certainly jurisdiction to make such an order under s. 190 of the Act. Though there was no such recital, it would have been open to the appellant to establish that fact by necessary evidence. In the absence of any such evidence we must hold that it has

not been established that the Chief Customs Authority made its order under s. 190 of the Act with the consent of the respondent.

1961

Collector of Customs, Baroda v. *Digvijaysinhji Spinning & Weaving Mills Ltd.*

Subba Rao J.

This will not preclude the State from establishing by relevant evidence that the penalty was imposed under s. 190 of the Act with the consent of the owner of the goods in an appropriate proceeding.

In the result the order of the High Court is correct and the appeal is dismissed.

Appeal dismissed.

DAJI KRISHNAJI DESAI TAMBULKAR
v.
GANESH VISHNU KULKARNI AND OTHERS

1961

April 12.

(K. SUBBA RAO, RAGHUBAR DAYAL and J. R. MUDHOLKAR, JJ.)

Khoti Land—Transfer prior to 1946 without consent of Khot—Rights of purchaser—Bombay Tenancy Act, 1939 (Bom. 29 of 1939), s. 31—Khoti Settlement Act, 1880 (Bom. 1 of 1880), ss. 3, 9.

The land in suit was Khoti land and s. 9 of the Khoti Settlement Act, 1880, prior to its amendment prohibited the transfer of the occupancy right without the consent of the Khot. Section 31 of the Bombay Tenancy Act, 1939, which came into force from April 1946, amended s. 9 of the Khoti Settlement Act by which no consent of the Khot was necessary for transferring the occupancy rights in the land. In 1892, R sold his occupancy right without the consent of the Khot to L, the predecessor-in-interest of respondent No. 1. In 1945, R's successor again sold the same occupancy right to the appellant also without the consent of the Khot. The appellant's case was that the sale deed in 1892 in favour of the predecessor-in-interest of respondent No. 1 was void as the transfer of the occupancy right was made without consent of the Khot; whereas respondent No. 1 contended that R by the sale deed in 1892 had already lost his right to the property in suit and therefore R's successors had no title to pass in 1945 in favour of the appellant.

Held, that the occupancy right in a Khoti land could not be transferred without consent of the Khot prior to April 1946, when the Bombay Tenancy Act, 1939, came into force.