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BECKER GRAY &amp; CO. (1930) LTD. &amp; ORS.

v.

UNION OF INDIA &amp; ANR.

January 23, 1970

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[S. M. SIKRI, V. BHARGAVA AND I. D. DUA, JJ.]

*Foreign Exchange Regulation Act 7 of 1947, ss. 12(1) and 23A—Sea Customs Act ss. 19 and 167(8)—Under-valuation of invoices of goods exported whether a violation of s. 12(1) of Act 7 of 1947—Declaration of value of goods on the basis that they were sold to buyer when in fact they were yet unsold whether a contravention of s. 12(1)—Whether penalty leviable under s. 167(8) of Sea Customs Act.*

The appellants were exporters of jute carpet backing cloth and in connection with some exports by them between January 1957 and January 1963 penalties were imposed on them under s. 167(8) of the Sea Customs Act for contravention of s. 12(1) of the Foreign Exchange Regulation Act No. 7 of 1947 in view of the provisions of s. 23A of the Act and s. 19 of the Sea Customs Act by the Adjudicating Officer. Appeals to the Central Board of Revenue were dismissed. The Board in upholding the penalties found two defects in the declarations filed by the appellants in purported compliance with s. 12(1) of the Act 7 of 1947, namely : (1) that the invoice value of the goods was shown at a figure lower than the real sale value; (2) that in the declaration it was stated that the invoice value declared was the full export value of the goods and was the same as that contracted with the buyer, whereas the correct declaration should have been that the declarations contained a fair valuation of the goods which were unsold. The declarations were given in form G.R. I prescribed by the Rules framed under Act 7 of 1947. In appeal before this Court against the decision of the Board it was urged on behalf of the appellants that the defects in question did not amount to contravention of the restrictions imposed by s. 12(1) of the Act 7 of 1947, so that the imposition of the penalties was not justified.

F HELD : (i) In view of the decision of this Court in the case of *M/s. Rai Bahadur Shreeram Durga Prasad (P) Ltd.*, which was fully applicable to the facts of the present case the imposition of the penalties on the basis that the under-valuation of the goods amounted to contravention of s. 12(1), was unjustified. [447 B]

*Union of India v. M/s. Rai Bahadur Shreeram Durga Prasad (P) Ltd. and Ors.* [1969] 1 S.C. Cases 91, applied.

G (ii) The second defect found by the Board in the declarations related to points on which s. 12(1) does not require a declaration. A declaration, which is in contravention of the Rules or the forms prescribed under the Rules may be penalised under s. 23 of the Act but such contravention will not attract the provisions of the Sea Customs Act. Under s. 23A of the Act 7 of 1947 only a breach of restrictions imposed by s. 12(1) of the Act is to be deemed to be a contravention of restrictions imposed by s. 19 of the Sea Customs Act. An incorrect declaration in contravention of the Rules made under s. 27 of the Act 7 of 1947 is not to be deemed a contravention of any restriction imposed by s. 19 of the Sea Customs Act. Therefore the imposition on the appellants of penalties under s. 167(8) of the Sea Customs Act was totally unjustified. [447 C-F]

**CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 1178 to 1180 of 1967.**

Appeal by special leave from the order dated March 13, 1967 of the Central Board of Excise and Customs (Appeal), New Delhi in appeals Nos. 47 to 50 of 1967.

*N. A. Palkhivala, P. P. Ginwala, D. N. Mukherjee, R. S. B. Kumar and A. Choudhury*, for the appellants.

*N. S. Bindra and S. P. Nayar*, for the respondents.

*M. C. Chagla and D. N. Gupta*, for the intervener.

The Judgment of the Court was delivered by

**Bhargava, J.**—The appellants in these appeals were exporters of Jute Carpet Backing Cloth and, in connection with some exports by them between the period January 1957 to January 1963, penalties have been imposed on them under section 167(8) of the Sea Customs Act for contravention of section 12(1) of the Foreign Exchange Regulation Act No. 7 of 1947 (hereinafter referred to as "the Act") in view of the provisions of section 23A of the Act and section 19 of the Sea Customs Act by the Adjudicating Officer. Their appeals to the Central Board of Excise and Customs (hereinafter referred to as "the Board") were dismissed, though the amounts of penalties imposed were reduced. The order of the Board dismissing the appeals has been challenged in these appeals before us by special leave.

The Board based its decision for upholding the penalties on the finding that the declarations given in purported compliance with s. 12(1) of the Act were defective in two respects. One defect found was that, in the declarations, the invoice value of the goods was shown at a figure lower than the real sale value. The second defect found was that, in the declarations, it was stated that the invoice value declared was the full export value of the goods and was the same as that contracted with the buyer whereas, in fact, the goods had not been sold to the buyer and were being exported on consignment basis, so that the correct declarations should have been that the declarations contained a fair valuation of the goods which were unsold. The declarations were given in Form G.R.I. prescribed by the Rules framed under section 27 of the Act. On behalf of the appellants, the argument advanced was that these defects in the declarations did not amount to contravention of the restrictions imposed by s. 12(1) of the Act, so that the imposition of these penalties was not justified.

Sc far as the question of under-valuation of the exported goods in the declarations or the documents accompanying the declarations is concerned, reliance was placed on the decision of this

- A** Court in *Union of India and Others v. M/s. Rai Bahadur Shreeram Durga Prasad (P) Ltd. and Others*<sup>(1)</sup> where this Court held that under-valuation in a declaration under s. 12(1) of the Act does not amount to contravention of the restrictions imposed by that provision. That decision is fully applicable to the present cases before us on this point and, in view of that decision, the imposition of the penalties, on the basis that the under-valuation of the goods amounted to contravention of s. 12(1), is unjustified. We may add that we see no justification for granting the request of Mr. Bindra, learned counsel for the respondents, that that decision should be reconsidered by a larger Bench.

- C** Mr. Bindra, however, urged that, in these cases, there was the distinctive feature that the Board also found that the declarations were further incorrect inasmuch as the goods were declared to have been sold, while they were being exported on consignment basis as unsold goods, and it was further stated in the declarations that the full export value of the goods is the value shown instead of stating that it was the fair valuation of unsold goods. The finding recorded by the Board, no doubt, shows that the declarations required to be made under the Rules in Form G.R.I. contained incorrect information; but that incorrect information related to points on which s. 12(1) does not require a declaration. A declaration, which is in contravention of the Rules of the Forms prescribed under the Rules, may be penalised under section 23 of the Act, but such contravention will not attract the provisions of the Sea Customs Act. Under s. 23A of the Act, only a breach of restrictions imposed by s. 12(1) of the Act is to be deemed to be contravention of restrictions imposed by s. 19 of the Sea Customs Act. An incorrect declaration in contravention of the Rules made under s. 27 of the Act is not to be deemed a contravention of any restriction imposed by s. 19 of the Sea Customs Act. It is, therefore, quite clear that, in these cases, the imposition of the penalties under s. 167(8) of the Sea Customs Act was totally unjustified. Consequently, these appeals are allowed with costs, and the orders of the Adjudicating Officer, and the Board imposing the penalties under s. 167(8) of the Sea Customs Act are set aside. Penalties, if recovered, shall be refunded.
- F** G.C. *Appeals allowed.*