

RAJESH KUMAR SHARMA
v.
UNION OF INDIA AND ORS.

FEBRUARY 2, 2007

[DR. ARIJIT PASAYAT AND S.H. KAPADIA, JJ.]

Customs Act, 1962; s. 35(1)(a)/Customs (Compounding of offences) Rules, 2005; Rule 5/Circular No.54/2005—Cus dated December 30, 2005 issued thereunder:

Compounding of an offence committed in terms of provisions under Customs Act—Fixation of compounding amount in terms of Rule 5—Permissible limit—Interpretation of—Held: Purpose of compounding of offence is to prevent litigation and encourage early settlement of disputes—In fixation of compounding amount in terms of Rule 5 'Upto' not applies to both 20% of market value of goods or Rupees ten lakhs but has to be read along with the phrase 'whichever is higher'—Petition lacks merit, hence dismissed—Interpretation of statutes.

Petitioner had applied for compounding of an offence committed by him under Section 135(1)(a) of the Customs Act, 1962. The Compounding Authority imposed a sum of Rupees Ten lakhs as compounding amount. The order of the authority was challenged by the petitioner on the ground that the compounding amount so fixed is beyond the permissible limit. The petition was rejected by the High Court. Hence the present special leave petition.

Petitioner contended that the extent of compounding amount as fixed by the Compounding Authority was beyond the permissible limit and it should have been 20% of the market value as declared; and that since the purpose of compounding is to prevent unnecessary litigation, if the interpretation given by the High Court that the quantum has to be upto 20% of the market value of the goods or upto Rs.10,00,000/- whichever is higher is accepted same would be counter productive.

Dismissing the appeal, the Court

HELD:1.1. Purpose of compounding of offence against payment of compounding amount is to prevent litigation and encourage early settlement

A of disputes. [Para - 6] [247-C]

1.2. The crucial words in Rule 5 of the Customs Rules are "whichever is higher". According to the petitioner, the word "up to" applies to both 20% of the market value of the goods or Rupees Ten Lakhs. This interpretation as suggested is clearly unacceptable. If the interpretation suggested is

B accepted, it would render expression "whichever is higher" redundant. [Para 7] [247-G]

CIVIL APPELLATE JURISDICTION : Special Leave Petition (C) No. 21435 of 2006.

C From the Judgment and final Order dated 15.9.2006 of the High Court of Delhi at New Delhi in C.W.P. No. 14639/2006.

Rajeev Kr. Tiwari, Kumar Parimal and P.V. Yogeswaran for the Appellant.

The Judgment of the court was delivered by

D Dr. ARIJIT PASAYAT, J. 1. Though we are not granting leave, in view of re-iteration of plea taken in this special leave petition in several cases, the petition is being disposed of by a detailed order.

E 2. Challenge is to the order passed by a Division Bench of the Delhi High Court dismissing the writ petition filed by the petitioner. Challenge in the writ petition was to the order dated 28th July, 2006 passed by the Chief Commissioner of Customs, Gujarat Zone, Ahmedabad.

3. Background facts in a nutshell are as follows:

F Petitioner had applied for compounding of an offence committed by him under Section 135(1)(a) of the Customs Act, 1962 (in short the 'Act'). After considering the application filed by the petitioner, the Compounding Authority allowed the application and imposed compounding amount of Rs. 10,00,000/-. In the writ petition stand taken by the petitioner was that the compounding amount as fixed is beyond the permissible limit. This plea was rejected by the High Court.

G 4. In support of the petition, it has been stated that the extent of compounding amount as fixed by the Compounding Authority was beyond the permissible limit. It is submitted that market value of the goods which had not been declared was Rs. 8,45,176/- and therefore it should have been 20% of the said market value.

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5. It is stated that since the purpose of compounding is to prevent unnecessary litigation, if the interpretation given by the High Court that the quantum has to be upto 20% of the market value of the goods or upto Rs.10,00,000/- whichever is higher is accepted same would be counter productive. A

6. The guidelines for compounding are contained in the Circular No.54/2005-Cus dated 30th December, 2005. Central Government had brought into force the Customs (Compounding of Offences) Rules 2005 (in short the 'Customs Rules') and Central Excise (Compounding of Offences) Rules, 2005 (in short the 'Central Excise Rules') with effect from 30th December, 2005. The purpose of compounding of offence against payment of compounding amount is to prevent litigation and encourage early settlement of disputes. The cases where compounding would be rejected are also spelt out in the said circular. The relevant Rule is Rule 5 of the Customs Rules which so far as relevant reads as follow: B

Fixation of the Compounding Amount- For the purpose of compounding of offences under the various provisions of the Act, the compounding amount shall be as provided hereinbelow:- D

| | | | |
|-------------|--|---|---|
| (1) (3) xxx | xxx | xxx | |
| (4) | Offence specified under Section 135(1) (a) of the Act. | <i>Upto twenty per-cent of market value of the goods or Rupees ten lakhs whichever is higher.</i> | E |
| (5) (7) xxx | xxx | xxx | |

(Underlined for emphasis) F

7. The crucial words in the Rule are "whichever is higher". According to learned counsel for the petitioner, the word "up to" applies to both 20% of the market value of the goods or Rupees Ten Lakhs. This interpretation as suggested is clearly unacceptable. If the interpretation suggested is accepted, it would render expression "whichever is higher" redundant. The inevitable conclusion is that the petition lacks merit, deserves dismissal, which we direct. G