
(1964) 06 KL CK 0037
In the High Court Of Kerala
Case No : O. P. No. 391 of 1963

A. S. Bava

APPELLANT

Vs

Collector of Customs and Central Excise, Cochin

RESPONDENT

Date of Decision : 30-06-1964

Acts Referred:

Central Excise Rules, 1944 — Rule 32(2)
Sea Customs Act, 1878 — Section 167(8)

Citation : (1965) KLJ 533

Hon'ble Judges : P. Govindan Nair, J

Bench : Single Bench

Advocate : S. Narayanan Potti, N. K. Varkey and N. Dharmadan, for the Appellant; M. U. Isaac, for the Respondent

Final Decision : Allowed

Judgement

P. Govindan Nair, J.—The petitioner has been penalised by an order which has been produced in this proceeding as Ext. P. 6. This order was passed by the Collector of Customs and the relevant part of it, in so far as it relates to the imposition of penalty, is in these terms:

The 157 bags of tobacco weighing 7658.98 Kgs. of Biri tobacco mixture seized from the L-2 premises of Sri A.S. Bhava, Cochin are liable to be confiscated but as the goods were provisionally released to the owner, before adjudication, he was asked to produce the goods in terms of the bond before 5-11-1962. On his failure to do so, I appropriate the amount of Rs.2000/- (Rupees two thousand only) out of the security deposit of Rs.2000/- furnished by him towards fine fixed by me in lieu of confiscation of the goods.

I also direct that Sri A.S. Bava should pay duty at the higher rate on 5862.22 Kgs. of Biri tobacco brought in his L-2 under T.P. 1--599495 dated 3-10-1961 a portion of which was found in the 157 bags which were seized under R. 40 of the Central Excise Rules, 1944.

A few facts are necessary to understand why these penalties have been imposed on the petitioner. The petitioner purchased 108 hags of tobacco, weighing 5862.22 Kgs. and described as bin tobacco mixture, from one C. Subramonia Pillai. This C. Subramonia Pillai had obtained a T. P. I. permit dated 3-10-1961. This permit described the tobacco as falling under the classification 4-1-6 & 4-1-5 (iii). The said C. S. Pillai transported this tobacco to the godown of the petitioner. The petitioner is a wholesale purchaser of tobacco. His godown was inspected on several occasions by the Excise Authorities. Rut, when it was inspected on 15-12-1961, 157 bags found in the godown, were kept under lock and key. These 157 bags were seized later, on 8th February, 1962, and the goods were released to the petitioner on executing a bond on 15-6-1962.

2. Ext. P. 1, a show cause notice, in the meantime, was issued to the " petitioner and his explanation is Ext. P.2. The order, I already referred to, is Ext. P.6.

3. In the show cause notice, two rules have been referred to, JR. 32 (1) & R. 40 of the Central Excise Rules, 1944. The reference i take it is to R. 32 and particularly to R. 32 (2), though what is mentioned in the notice is to R. 31 (1). The order Ext. P. 6 was not sought to be supported on the basis of R. 40 and I think correctly. R. 32 reads as follows:

32. Tobacco not to he curried except under transport documents:--(1) Except for tobacco" in a green state and except for small quantities of cured tobacco not exceeding in weight two standard seers for personal or domestic use.

(a) no unmanufactured tobacco shall be carried or transported without a valid permit in the proper Form signed by an officer or a certificate in the proper Form signed by the curer, a licensed broker or commission.-AGENT or the whole sale dealer to whose premises it is to be carried or transported:

Provided that duty-paid tobacco may be carried or transported from the premises of a licensed wholesale dealer to the premises of another licensed whole-sale dealer under cover of a sale-note issued by the consignor, subject to such limitations and such other conditions as the Central Hoard of Revenue may by order in writing impose;

(b) no unmanufactured tobacco shall except in special circumstances, where the Collector by written order otherwise directs, be carried or transported by rail, motor vehicle, river or canal without a valid permit in the proper Form signed by an officer.

(2) If any person

(a) carries or transports such tobacco without a valid permit, certificate or sale note, or

(b) while tarrying or transporting such tobacco, does not on request by an officer forthwith produce a valid permit or certificate or sale note, as the case may be, or

(c) enters any particulars in the certificate or sale note in respect of any such

tobacco, which are, or which he has reason to believe to be sale. he shall be liable to a penalty not exceeding one thousand rupees, and the tobacco in respect of which the offence is committed shall be liable to confiscation.

The Rule lays down that unmanufactured tobacco shall not be carried or transported without a valid permit signed by the curer, licensed broker, or commission agent or wholesale dealer. If, however, the transport is by rail, motor vehicle or canal, the permit must be signed by a proper officer in Form T. R. 2 unless the Collector in special circumstances gives other orders.

4. A breach of this Rule renders the offender to a penalty up to one thousand rupees and the tobacco concerned is liable to confiscation.

5. Not only the actual carrier but also the person on whose behalf the goods are being carried is liable to punishment under this Rule. If the goods at the destination are found to have been removed under an invalid permit, the persons concerned are liable to punishment.

6. The conditions for the carriage or transport of duty-paid-tobacco from the premises of a licensed wholesale dealer to the premises of another licensed wholesale dealer under cover of a sale-note issued by the seller are as noted below:

(a) The sale-notes should be in duplicate and serially numbered, new series of numbers being used for each calendar year. Books containing blank sale-notes are to be presented to the Range Officer for affixing his initials: or stamp on such sale-note before the books are brought into use. The duplicate is to be retained by the seller and the original given to the buyer to cover the transport as a permit.

(b) Each sale-note should contain at least the following particulars"-- (i) Date of issue;

(ii) Name, address and licence numbers of

(1) seller and (2) consignee; (iii) Number, and date of--

(1) The transport permit or sale-note under which the seller received the tobacco and in the latter case, the transport permit number recorded in such sale-note; and

(2) The certificate of payment in Form D. D. 1 or the application in Form A. R. I. under which duty was paid.

(iv) Number and description of packages;

(v) Marks and numbers;

(vi) Variety of tobacco;

(vii) Rate of duty paid;

(viii) Gross weight;

(ix) Net weight;

(x) Manner of transport;

(xi) Signature of the licensee or his agent.

(c) The seller is required to endorse on the original transport permit in Form T.P. 1 or on the predecessor sale-note, the number and date of the sale-notes issued in respect of the tobacco covered by the permit or sale-note, as the case may be, and the quantity transported under each such sale-note and likewise record on his sale-note similar particulars of the original transport permit or predecessor sale-note, if any.

(d) Without the prior sanction of the Central Board of Revenue, sale-notes are to be used in respect of consignments--

(i) Exceeding one and a half standard maunds of tobacco, which has paid duty at a rate higher than six annas per in.

(ii) Exceeding five standard maunds of tobacco, which has paid duty at a rate equal to be less than six annas per lb.

(e) Sale-notes are not to be used for the transport of tobacco on its removal from a bonded warehouse.

Counsel on behalf of the petitioner contended that R. 32 (2) creates an offence relating to a person who has violated the conditions mentioned in the rule and cannot be pressed into service to confiscate the goods belonging to a person who has not contravened the conditions mentioned in the rule. This rule, according to him, is not capable of enabling an authority to pass an order in rem.

7. Explaining this position, it was urged that the confiscation provided under R. 32 (2) is a necessary corollary arising out of and incidental to the imposition of a penalty on a person who carries or transports tobacco without a valid permit or a person who while carrying or transporting such tobacco, does not on request by an officer, produce a valid permit. I am inclined to accept this contention. Reference was made to the decision of the Supreme Court in *Shewpujanrai Indrasanrai Ltd. Vs. The Collector of Customs and Others*, . The section that was construed by Their Lordships is Section 23 of the Foreign Exchange Regulation Act. Section 23 (1) of that Act is in these terms:

23. Penalty and Procedure--(i) Whoever contravenes any of the provisions of this Act or of any rule, direction or order made thereunder shall be punishable with imprisonment for a term which may extend to two years or with fine or with both and any Court trying any I such contravention may, if it thinks fit and in addition to any sentence which it may impose for such contravention, direct that any currency, security, gold or silver, or goods or other property in respect of which the contravention has taken place shall be confiscated.

It appears to me that this section is similar to R. 32 (2) though the words "any such contravention may, if it thinks fit, and in addition to any sentence which it may impose for such contravention...." do not occur in R. 32. This does not, according to me, change the meaning of R. 32 (2). All that the rule states is about the penalty or penalties that may be imposed and that imposition must arise out of a contravention. That contravention has to be by a person. It necessarily follows that the confiscation must also be a penalty imposed on that person. This being so it is difficult to hold that the purchaser of the goods who has not contravened the provisions referred to in R. 32(2) should also be penalised under that rule. In fact, it appears to me that such a position would be unwarranted. Principles laid down by the Supreme Court in the decision referred to, have to be followed. I am unable to accept the argument of learned counsel on behalf of the respondent that R. 32 (2) is akin to Section 167 (8) of the Sea Customs Act. In Section 167 (8) of the Sea Customs Act the offence is clearly stated thus:

(8) If any goods, the importation or exportation of which is for the time being prohibited or restricted by or under Chapter IV of this Act, be imported into or exported from India contrary to such prohibition or restriction;.

And it is followed in the last column by penalties that may be imposed and enumerates the penalties thus:

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.

8. This section clearly enables an order of confiscation being passed--if the goods concerned have been imported or exported contrary to the prohibition against that importation and exportation contained in Chapter IV of the Sea Customs Act. This section enables the penalty of confiscation being imposed on mere proof of the fact that goods have been imported or exported contrary to the prohibition referred to. The person concerned in such import or export is also made liable, does not alter the position. It is not possible to consider the provision in the Sea Customs Act as similar to R. 32 (2) of the Central Excise Rules, 1944. It follows therefore that the goods which were seized from the petitioner, are not liable to confiscation. It is nor even suggested, nor was it done by Ext. P. 6 order, that such penalty or fine or imposition of duty would arise out of the bond executed by the petitioner irrespective and independent of any liability under the statute and the rules. In the light of the above the order passed by the Collector forfeiting the sum of Rs.2000/- and imposing on the petitioner an obligation to pay a duty on 5862.22 Kgs. of tobacco cannot be sustained. I quash Ext. P. 6 in so far as it relates to the petitioner and allow this writ petition with costs.