(2003) 08 KAR CK 0070

In the Karnataka High Court

Case No : Writ Petition No''s. 32871-32872 of 2000

Abdul Khader APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 20-08-2003

Acts Referred:

Customs Act, 1962 — Section 34
Employees Provident Fund and Miscellaneous Provisions Act, 1952 — Section 14 B

Citation : (2004) 92 ECC 252 : (2003) ECR 137 : (2003) 157 ELT 517 : (2003) 4 KCCR 268 SN

Hon'ble Judges : R. Gururajan, J

Bench : Single Bench

Advocate : Kiran S. Javali, for the Appellant; N.R. Bhaskar, CGSC, for the Respondent

Final Decision : Dismissed

Judgement

R. Gururajan, J.—Petitioners are before me challenging an order bearing Nos. 2633 and 2704/96, dated 30-12-1996 [1999 (109) E.L.T. 174] vide Annexure-C enhancing the penalty levied by an order dated 10-12-1993 vide Annexure-A and rejection of reference by Order Nos. 48 and 49/99, dated 6-8-99 vide Annexure-D by the Tribunal.

2. Petitioners state in these petitions that Officers of respondent No. 2 acting on credible information that a truck bearing Registration No. KA-25-1254 carrying contraband silver bricks would be going towards Indore after passing through Karkala had started checking all the lorries passing on that route. A truck with brick coloured front cabin was seen coming from Padubidri side and moving towards Karkala. The Officers stopped the vehicle and the vehicle was brought to DRI Office, Mangalore. The vehicle was searched and the officers recovered 75 white metallic bricks weighing 2676.394 kgs and valued at Rs. 2,14,11,152/-. The silver bricks were seized in terms of a mahazar. Statements of the driver and the cleaner were recorded. Thereafter the DRI apprehended the petitioner -

Abdul Khader and obtained his voluntary statement. He confessed that he understood contents of the mahazar for seizure of 75 silver bricks of foreign origin; that he had been doing smuggling for the last twenty-five years and his brother Dhiraj Hussain (second petitioner) was assisting him in the landing work. He knew that it is an offence to smuggle silver into India. Proceedings were initiated by way of show cause notice calling upon the petitioners to show cause as to why the said 75 bricks of foreign origin should not be confiscated in terms of the Customs Act.

3. Matter was contested. Thereafter the Collector of Customs, Karnataka Region, Bangalore passed an order dated 10-12-1993. In the order, Collector of Customs confiscated the 75 silver bricks of foreign origin valued at Rs. 2,14,11,152/- in terms of the Customs Act. He also imposed penalty on various persons associated with it. The petitioner was asked to pay Rs. 1,50,000/- by the authority. The Department filed an appeal aggrieved by the order of the Collector before the Tribunal. The Tribunal after noticing the relevant facts enhanced the penalty on the petitioner Abdul Khader to fifteen lakhs and enhanced the penalty on the petitioner Dhiraj Hussain to five lakhs. Thereafter, the petitioners sought for reference and the reference was rejected by the Tribunal. It is in these circumstances, petitioners are before me challenging the order enhancing the penalty and the subsequent rejection of reference by the Tribunal.

4. Notice was issued, respondents have entered appearance. Respondents have explained the various facts leading to enhancement of the penalty. They justify their order. Heard the learned Counsel for the parties.

5. After hearing the learned Counsel, I have carefully perused the material on record.

6. Before considering the merits of the matter, this Court has to take note of object of levy of penalty by the State. Penalty is being levied in terms of the Customs Act as a deterrent measure to arrest smuggling activity in this country. Section 34 of the Customs Act provides for confiscatory proceedings. Section 34A provides for inflicting punishment apart from levy of fines. It further provides for penalties in terms of the Act. The offences committed under Customs Act are economic offences.

7. The object of imposition of penalty is to arrest the tendency of repetition by person concerned in the matter. In the book titled as ''Criminal Sociology'' authored by Mr. Enrico Ferri, Professor in Criminal Law has noticed Smuggling vis-a-vis Penal Substitutes. The author says that smuggling which for centuries resisted the most atrocious penalties, such as amputation of the hands, and death and in our day imprisonment and volleys of Customs officers, decreases visibly thanks to the lessening of the duties, as shown in the case of France by Villermme and others.

8. The Supreme Court in the case of Ram Narain Poply v. Central Bureau of Investigation AIR 2003 SCW 3257 has expressed its concern with regard to an

economic offence in the following words;

"382. The cause of the community deserves better treatment at the hands of the Court in the discharge of its judicial functions. The Community or the State is not a persona not grate whose cause may be treated with disdain. The entire community is aggrieved if economic offenders who ruin the economy of the state are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even handed manner without fear of criticism from the quarters which view the white collar crimes with a permissive eye unmindful of the damage done to the National Economy and National interest, as was aptly stated in State of Gujarat v. Mohanlal Jitamalji Porwal [AIR 1987 1321]."

9. The Supreme Court also has noticed the object of penalty in the famous case of Organo Chemical Industries and Another Vs. Union of India (UOI) and Others, . The Supreme Court noticed the question of damages in terms of Section 14B of the Employee''s Provident Fund Act. It has noticed that imposition of damages u/s 14B serves a two-fold purpose. It results in damnification and also serves as a deterrent. The predominant object is to penalise, so that an employer may be thwarted or deferred from making any further defaults.

10. In the light of the Courts finding with regard to a deterrent effect of penalty on smuggling let me see as to whether a case is made out in the case on hand.

11. Material facts reveal of a smuggling activity on the part of several others including the petitioners herein. Large quantity of silver is smuggled into this country resulting in the proceedings against the petitioners. The proceedings culminated in an order of confiscation by the Collector of Customs. He has also imposed fine. Admitted facts reveal that the matter was taken to the Tribunal and the Tribunal disposed of the appeal. However, the Tribunal insofar as the petitioners are concerned has chosen to enhance the penalty.

12. A reading of the order of the Tribunal would show that petitioners were involved in smuggling activity. It is also seen that the first petitioner Abdul Khader is engaged in the trade of smuggling for the last 25 years, according to his own submission. He has worked for a gang headed by Musthaffa also known as ''Tiger Musthaffa'' as per the findings of the Tribunal. Similarly the Tribunal has noticed the activities of Dhiraj Hussain and it has noticed that he has taken active part in supervising operations. The Tribunal has also noticed that the value of the silver smuggled is two crores. After noticing these factual aspects, the Tribunal in my view, is fully justified in enhancing the penalty as has been done in the case on hand. I am unable to agree with the submission of the learned Counsel that the levy of penalty in the given set of facts require my interference.

I confirm the orders of the Tribunal in the larger interest of the country and to arrest smuggling activity in this country.

13. Insofar as the reference rejection is concerned, I am in full agreement with the Tribunal. There is no question of law that requires to be referred to this Court. The order of the Tribunal is based on the facts laid before it and therefore the Tribunal is justified in rejecting the reference application. Even otherwise, since I have come to a conclusion that on facts penalty is fully justified, I am not inclined to set aside Annexure-D at the instance of the petitioners. Moreover, petitioners argued only with regard to enhancement of penalty and the enhancement is confirmed by me by way of acceptance of the order in the light of long standing smuggling activity and in the light of large sums of money involved and to arrest smuggling activity in this country.

14. Before concluding, I must observe that this is a solid case evidencing that a mere levy of penalty has no impact on an experienced and seasoned smuggler. Hence time has come for this Court, to remind those in power to provide other deterrent measures in the larger interest of Indian economy. Twenty-five penalties have not shown any impact on the petitioners in the case on hand. Therefore, it is necessary to provide further arresting measures by appropriate legislation such as;

(a) Declaring a second penalty sufferer as a ''repeater'' in terms of the Customs Act.

(b) Debarring such repeaters from holding any public office/contesting elections by statutory provisions.

(c) Disqualifying him from travelling abroad.

(d) Compulsory prison for a repeater.

(e) The authorities may also consider creating a special cell if not already done for closer supervision/surveillance on these repeaters in the interest of commerce and economy in this country.

15. These few thoughts gathered in my mind and these thoughts are reflected in this judgment to brighten Indian Economy without smuggling. I am firmly of the view that unless smuggling is curbed with an iron hand, Indian economy is bound to suffer and a poor country like India cannot suffer any adverse effect on its economy on account of unchecked smuggling at the cost of Nation.

16. With these concluding remarks, I deem it proper to dismiss both these petitions on the facts of this case. I further deem it proper to direct the registry to send a copy of this order to the Cabinet Secretary - Government of India, Secretary - Finance Department, for appropriate remedial legislative measures in the larger interest of the country.

No costs.

