

(2015) 01 MAD CK 0130

In the Madras High Court

Case No : W.A. No. 1720 of 2014 and M.P. No. 1 of 2014

Additional Director General

APPELLANT

Vs

J.K.S. Air Travels

RESPONDENT

Date of Decision : 05-01-2015

Acts Referred:

Constitution of India, 1950 — Article 300A
Customs Act, 1962 — Section 108, 110, 113, 121, 121
Penal Code, 1860 (IPC) — Section 193, 228

Citation : (2015) 321 ELT 213 : (2015) 1 MLJ 769

Hon'ble Judges : M. Venugopal, J.; Satish K. Agnihotri, J.

Bench : Division Bench

Advocate : Velayutham Pichaiya, for the Appellant; A.K. Jayaraj, Advocates for the Respondent

Final Decision : Disposed off

Judgement

M. Venugopal, J.—The Appellants have preferred the instant Writ Appeal as against the order dated 08.10.2014 passed in W.P. No.22700 of 2014 by the Learned Single Judge.

2. The Learned Single Judge, while passing the impugned order dated 08.10.2014 in W.P. No.22700 of 2014, in paragraph No. 30, had observed that "To put it differently, the cash seized from the office premises of the petitioner in the second writ petition is on suspicion. Suspicion cannot take the place of proof, however, strong it may be. Therefore, refusing to order the provisional release of the cash seized from the premises of the petitioner in the second writ petition, may give a leverage or licence to the Respondents to stamp any item or cash seized from any office premises as the sale proceeds of smuggled goods. The scheme of Sections 113 read with Sections 121 to 124 do not appear to authorise such a course. As I have pointed out in para 17 above, two pre-conditions are to be satisfied for invoking Section 121 of the Act to order confiscation. There is no prima facie evidence to show that both these pre-

conditions are satisfied in the second case on hand. The Constitutional guarantee with respect to the right to property under Article 300A cannot be allowed to be infringed at the drop of the hat, by allowing the officers to walk into any office and seize cash on the ground that they represent the sale proceeds of the smuggled goods. Therefore, I am of the view that the second writ petition deserves to be allowed" and resultantly, allowed the Writ Petition by directing the Respondents to return the amount of Rs.7,00,000/- of Indian currency seized from the office premises of the petitioner on 24.06.2014, within a period of two weeks from the date of receipt of a copy of this order, subject to their executing a personal bond to deposit the amount, if an order of adjudication is passed against them.

3. The primordial submission of the Learned Counsel for the Appellants is that the Learned Single Judge, while allowing the Writ Petition on 08.10.2014, had failed to take into account an important fact that the Respondent, instead of answering the five summons issued to him beginning from 16.07.2014 to 14.08.2014 for his personal appearance etc., had filed the present Writ Petition without any valid reason or cause.

4. The Learned Counsel for the Appellants urges before this Court that the Respondent was not able to substantiate the origin of seized cash of Rs.7,00,000/- at the time of preparing the Mahazar and further that the explanation offered in the writ affidavit was only a concocted afterthought.

5. Advancing his arguments, the Learned Counsel for the Appellants projects a plea that a sum of Rs.40,40,000/- was seized from the possession of one Shri.Jayabal Shivakumar (Writ Petitioner in W.P. No.22355 of 2014) when he attempted to smuggle the same out of India through Chennai International Airport.

6. The Learned Counsel for the Appellants strenuously submits that this Court cannot sit as an Appellate Court over the decisions of an Adjudicating Authority, nor can it go into the adequacy of material upon which a reasonable belief was formed and in fact, the search and seizure on 24.06.2014 conducted and made by the Appellants officials were based on intelligence information and earlier seizure of sale proceeds of smuggled goods at Chennai Airport.

7. According to the Learned Counsel for the Appellants, based on the Specific Intelligence, Officers of Directorate of Revenue Intelligence, Chennai Zonal Unit intercepted a passenger by name, Jayabal Shivakumar at Chennai International Terminal, when he was about to depart from Chennai by Air Asia Airlines Flight AK 012 to Kuala Lumpur, Malaysia and on his examination and on his hand baggage in the presence of independent witnesses, a sum of Rs.40,40,000/- in Indian currency which was found concealed in his person and in the clothes of his hand baggage was recovered and further, the said Indian currency of Rs.40,40,000/- which was attempted out of India were seized under Mahazar proceeding dated 24.06.2014. Also, it is represented on behalf of the Appellants

that the said J.Shivakumar filed W.P. No.22355 of 2014 before this Court seeking issuance of direction to the Respondents in releasing and returning the said sum of Rs.40,40,000/- in Indian Currency, seized from him vide DRI File No.DRI/CZU/VIII/48/22/2014 and the same was dismissed.

8. Expatiating his contention, the Learned Counsel for the Appellants proceeds to take a plea that the Respondent had deliberately dissuaded the summons issued to him under Section 108 of the Customs Act, 1962 and had not participated in the investigation proceedings so far. Also, it is represented on behalf of the Appellants that the provisional release of the Indian currency amount of Rs.7,00,000/- seized from the office premises of the Respondent on 26.04.2014 indeed would cause great prejudice to the adjudication proceedings.

9. While winding up, the Learned Counsel for the Appellants contends that the cash seized under Section 110 of the Customs Act is based on the reasonable belief that the same are sale proceeds of the smuggled goods which cannot be released/returned to the Respondent.

10. Per contra, it is the submission of the Learned Counsel for the Respondent that the Learned Single Judge had rightly allowed the Writ Petition by directing the Appellants to return the amount of Rs.7,00,000/- of Indian currency seized from the office premises of the Respondent/Petitioner on 24.06.2014 etc. and further, the Learned Single Judge had correctly observed in the course of the order that "refusing to order the provisional release of the cash seized from the premises of the Petitioner (Respondent), may give a leverage or licence to the Appellants to stamp any item or cash seized from any office premises as the sale proceeds of smuggled goods etc.

11. At this stage, this Court pertinently points out that there is no dispute in regard to the fact that the Respondent was issued with summons under Section 108 of the Customs Act, 1962 dated 16.07.2014 in connection with the seizure of Rs.40,40,000/- from the possession of J.Shivakumar on 23/24.06.2014 at Chennai Airport and Rs.7,00,000/- from their office. In the first summon dated 16.07.2014, the Respondent was directed to appear on 21.07.2014 at 11.00 a.m. at the office of the Directorate of Revenue Intelligence, T.Nagar, Chennai - 17 and the said summon was issued only in connection with an enquiry relating to the seizure of aforesaid amount of Rs.40,40,000/- from the possession of one J.Shivakumar (Writ Petition in W.P. No.22355 of 2014) and Rs.7,00,000/- from the Respondent's office. Again, summon dated 22.07.2014 was issued to the Respondent for his appearance on 25.07.2014 at 11.00 a.m. before the Directorate of Revenue Intelligence, T.Nagar, Chennai - 17. Likewise, on 28.07.2014 the Respondent was issued with summon under Section 108 of the Customs Act, 1962 requiring him to appear on 01.08.2014 at 2.00 p.m. to give evidence. Also, summon dated 12.08.2014 was issued to the Respondent for his appearance on

13.08.2014 at 11.00 a.m. Again, on 14.08.2014 summon was issued under

Section 108 of the Customs Act addressed to the Respondent requiring him to appear on 20.08.2014 at 11.30 a.m. to give evidence.

12. It comes to be known that the Respondent had not replied to the five summons issued to him and further he had not appeared before the Senior Intelligence Officer, D.R.I., Chennai to give evidence. 13. It is to be borne in mind that sub-section (3) of Section 108 of the Customs Act, 1962 makes it mandatory upon a person summoned under that Act to state the truth upon any subject respecting which he is examined or makes a statement.

14. It cannot be gainsaid that solemnity and sanctity attached to a statement made during the enquiry is deemed to be a judicial proceedings within the meaning of Sections 193 and 228 of the Indian Penal Code and as such, the solemnity and sanctity are attached to the statements under Section 108 of the Act. If a person summoned or required to answer the questions or to adduce evidence in connection with the summons issued under Section 108 of the Customs Act, fails to do the same, then he is to face the necessary consequences.

15. Suffice it for this Court to point out that when an individual is obliged to attend in pursuance to the summons issued under Section 108 of the Customs Act, 1962, he is to state the truth and is expected to appear before the officer in obedience to the summons and in compliance with Law. Also that, it is the inherent power of every Gazetted Officer of the Customs Department to enquire into the matter of smuggling etc.

16. To put it succinctly, a summon can be issued to a person for the production of documents or those in possession or under the control of persons summoned and such a person is bound to attend and state the truth upon any subject pertaining to which he is examined by the summoning officer and these powers are showered obviously with an idea to check the smuggling.

17. In this connection, this Court very relevantly points out that the existence of a belief is a pre-condition for seizure and also that if there existed some material upon which such a belief could be formed the Court is not concerned with the propriety or the belief or sufficient of material as per decision *Gopaldas Udhavdas Ahuja and Another Vs. Union of India (UOI) and Others*, .

18. Furthermore, under Section 110 of the Customs Act, 1962 a proper officer has power to seize goods if he has reasonable belief that the goods are liable for confiscation. Of course, there must be some material so as to form a reasonable belief. As a matter of fact, law does not require that at this stage that the matter has to be established to the very core that the goods are smuggled goods. Moreover, seizure is made at the preliminary/initial stage to find out whether the same are smuggled/contraband goods and at that stage, a detail enquiry is neither practicable or possible nor permissible, as opined by this Court.

19. At this juncture, this Court worth recalls and recollects the decision of the Hon"ble Supreme Court in *Indru Ramchand Bharvani and Others Vs. Union of*

India (UOI) and Others, wherein it is held that "The circumstances under which the officers concerned entertained a reasonable belief have to be judged from his experienced eyes is well equipped to interpret the circumstances and to form a reasonable belief." Also, it is held that "once it is found that there was material relevant and germane the sufficiency of material is not open to Judicial Review".

20. It is to be noted that if an order of confiscation is passed by the competent authority without notice and without enquiry, the order of confiscation contravenes every principle of natural justice as per decision Collector of Customs, Madras V. Aha Rahman, AIR 1957 Madras 496 at page 503.

21. It is also brought to the notice of this Court that the 1st Appellant had issued a show cause notice dated 19.12.2014 under Section 124 of the Customs Act, 1962 to one Jayabal Shivakumar (Writ Petitioner in W.P. No.22355 of 2014) and the Respondent (Writ Petitioner in W.P. No.22700 of 2014) and in the said notice, it was categorically mentioned that the notice was issued without prejudice to any other action or which may be initiated against the notices under the Customs Act, 1962 or any other law for the time being in force.

22. On a careful consideration of respective contentions, this Court is of the considered view that the Respondent had not responded to the five summons issued to him by the concerned officer of the Department (beginning from 16.07.2014 to 14.08.2014) and instead he filed W.P. No.22700 of 2014 before this Court on 18.08.2014. The Respondent/Petitioner is obliged to attend in pursuance to the summons issued under Section 108 of the Customs Act and is expected to state the truth and further he is to appear before the officer concerned in obedience to the summons issued and in compliance with law. Without making his appearance before the concerned officer and avoiding the five summons issued, the filing of Writ Petition by the Respondent/Petitioner is a premature and otiose one. Ordinarily, as against the issuance of summons, a Writ Petition would not lie. When the Respondent had not participated in the enquiry/investigation proceedings by dissuading the five summons issued to him, then, the filing of the Writ Petition by him is devoid of merits, in the considered opinion of this Court.

23. That apart, in view of the fact that the Learned Single Judge had not borne in mind the ingredients of sub-section (3) of Section 108 of the Customs Act, 1962 which makes it mandatory upon the person summoned under that Act to state the truth upon any subject respecting which he is examined or makes a statement, this Court comes to an inevitable and irresistible conclusion that the views taken by the Learned Single Judge that "Suspicion cannot take the place of proof, however, strong it may be. Therefore, refusing to order the provisional release of the cash seized from the premises of the petitioner in the second writ petition, may give a leverage or licence to the Respondents to stamp any item or cash seized from any office premises as the sale proceeds of smuggled goods" and consequently, allowing the said Writ Petition by directing the Appellants to return the amount of Rs.7,00,000/- of Indian currency seized from the office

premises of the Petitioner on 24.06.2014 etc., are clearly unsustainable in the eye of law. Likewise, the purported reference made by the Learned Single Judge in regard to the scheme of Section 113 read with 121 to 124 of the Customs Act, 1962 may not be quite relevant to the facts of the present case because of the reason that the issuance of five summons to the Respondent beginning from 16.07.2014 to 14.08.2014 are at the pre adjudication/passing of final order stage in the subject matter in issue. Furthermore, the observation of the Learned Single Judge in the Writ Petition to the effect that "The Constitutional guarantee with respect to the right to property under Article 300A cannot be allowed to be infringed at the drop of the hat, by allowing the officers to walk into any office and seize cash on the ground that they represent the sale proceeds of the smuggled goods." is not a correct and legally valid one, in the considered opinion of this Court, based on the facts and circumstances of the present case which float on the surface. Viewed in that perspective, this Court, to prevent an aberration of justice and in furtherance of substantial cause of justice, interferes with the said order dated 08.10.2014 passed by the Learned Single Judge in W.P. No.22700 of 2014 and sets aside the same.

24. In the result, the Writ Appeal is disposed of, by directing the Appellants to issue fresh summon to the Respondent, specifying the date, time and place, in and by which he is to appear before the concerned officer and to give evidence/statement/reply, within a period of two weeks from the date of receipt of copy of this Judgment and further, the Respondent is directed to appear before the concerned officer at the specified date and time mentioned in the summon without fail and at that point of time, liberty is granted by this Court to the Respondent to raise all factual and legal pleas (including the production of necessary documents and also by filing any reply to the show cause notice dated 19.12.2014 issued by the 1st Appellant) in the manner known to law and in accordance with law, if he so desires/advised. No costs. Consequently, connected Miscellaneous Petition is closed.