(1966) 08 KL CK 0005

In the High Court Of Kerala

Case No : O. P. No''s. 3142 of 1964 and 2611 of 1965

Ahammed APPELLANT

Vs

Attorney General of India and another RESPONDENT

Date of Decision : 23-08-1966

Acts Referred:
Customs Act, 1962 — Section 115(2), 122

Citation : (1966) KLJ 1105

Hon'ble Judges : M.S. Menon, C.J;V.P. Gopalan Nambiyar, J

Bench : Division Bench

Advocate : M.M. Abdul Azeez and K.P. Radhakrishna Menon, for the Appellant; M.U. Isaac, for the Respondent

Final Decision : Dismissed

Judgement

V.P. Gopalan Nambiyar, J.—These two writ petitions raise a common question regarding the jurisdiction of the Collector of Central Excise, Cochin, to order confiscation of vehicles concerned in the illicit transport of contraband or smuggled goods. The confiscation of the contraband article and the imposition of a personal penalty were directed in these cases under Rules 9, 32 and 33 of the Central Excise and Salt Rules 1944. The confiscation of the vehicles concerned were ordered in both these cases under the provisions of Section 115(2) of the Customs Act 1962, as adapted for central excise adjudications by a Notification No. 68/63, issued under the provisions of Section 12 of the Central Excise and Salt Act 1944. The contention advanced in these O.Ps. is that by reason of the adaptation of section 115(2) of the Customs Act 1962, there is a power to order confiscation of the vehicles in regard to adjudications under the Central Excise and Salt Act and the Rules, but there has been no specification of the authority competent to exercise such a power.

2. Section 122 of the Customs Act 1962 specifies the authorities competent to adjudge any confiscation or penalty under the Act. The said section has not been adapted by notification No.68/63 issued u/s 12 of the Central Excise and Salt

Act. The corresponding provision under the Central Excise and Salt Act, namely section 33, limits the power to adjudge confiscation or penalty to cases "whereby rules made under this Act, anything is liable to confiscation or any person is liable to a penalty". The same limitation is also seen in the provisions of section 34 of the Central Excise and Salt Act. The argument of the counsel for the petitioners centred round the limitation in the provisions of the Central Excise and Salt Act and the absence of any adaptation of section 122 of the Customs Act 1962.

3. The argument, though attractive in the first blush, does not appear to us to stand closer scrutiny. We may extract section 115(2) of the Customs Act, 1962, as adapted by notification No.68/63. The section as adapted reads as follows:--

115 (20) Any conveyance or animal used as a means of transport in the removal of excisable goods in contravention of any of the provisions of the Central Excise Rules, 1944 or the carriage of any such goods snail be liable to confiscation, unless the owner of the conveyance or animal proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance or animal and that each of them had taken all such precautions against such use as are for the time being specified in the rules:

(We omit the proviso and the Explanation as unnecessary for our purpose).

4. Reading the section as adapted and incorporated into the Central Excise and Salt Act 1944, we cannot but be struck by the fact that the authority in the present case to adjudge the penalty for the removal of excisable goods in contravention of Rules 32 and 33 of the Central Excise Rules was the Collector. We cannot regard that any other departmental authority was intended or meant to adjudge confiscation of the vehicles concerned in the removal. It therefore seems to us to follow that the authority to adjudge the contravention of the Excise Rules in the present case, had, as a necessary corollary, also the power to direct confiscation of the vehicles concerned in the contravention. The adaptation of section 122 of the Customs Act 1962 and the specification of the authority to exercise the power of confiscation of the vehicles, appear to us, to be unnecessary. The objection to the jurisdiction of the Collector of Central Excise to direct a confiscation of the vehicles, or order payment of fine in lieu of confiscation, therefore fails.

5. These O.Ps. are accordingly dismissed; in the circumstances without costs. The counsel for the petitioner in O.P.No. 2611 of 1965 raised certain objections on the merits against the order of adjudication by the Collector. We are not satisfied that these grounds can be entertained in these proceedings. The remedy, if any, is by way of an appeal against the order, praying that the pendency of the O.P. in this court may be treated as a circumstance to excuse the delay in filing the appeal. If an appeal and such an application are presented, we dare say that they will be considered and dealt with by the appropriate

authorities on their merits and in accordance with law.

