
(2000) 04 PAT CK 0094
In the Patna High Court
Case No : Criminal W.J.C. No. 12 of 2000

Ajay Kumar Saha and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 21-04-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 11, 110, 124
Foreign Trade (Development and Regulation) Act, 1992 — Section 3

Citation : (2000) 72 ECC 575 : (2000) 3 PLJR 724

Hon'ble Judges : R.N. Sahay, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.N. Sahay, J.—this application under Article 226 of the Constitution of India, the petitioners, who are traders in betelnuts, seek appropriate writ for release of 40 bags of betelnuts which were seized from Brake Van of Brahmaputra Mail at Patna Junction on 28.4.1999 by the officers of Customs, Headquarter Patna. One of the grounds for release of the betelnuts is failure on the part of the Custom authorities to comply with Section 110(2) of the Customs Act, 1962.

2. The first petitioner asserts that he had purchased 10 bags of Assam Kata Dry Supari weighting 800 kg. from M/s. Amal Chandra Sana, Barpeta Road, Assam on 24.4.1999 on which Assam General Sales Tax was paid. Petitioner No. 2 purchased 10 bags of Assam Kata Dry Supari from Paresh Chandra Saha, Barpeta Road, Assam on the same day and 10 bags from Dhirendra Mohan Saha, Barpeta Road, Assam on 25.4.1999. Petitioner No. 3 purchased 10 bags of Assam Kata Supari from Ganesh Chandra Saha on 25.4.1999. Copies of the challan relating to above purchases are annexed as Annexure-1 series. It was further asserted that tax of Market Committee were paid on all the aforesaid purchases. 40 bags of betelnuts of above description were booked with Railway from Barpeta Road for Varanasi City Booking Office and the consignment were

sent by the railway authorities in the Break Van of Brahmputra Mail.

3. Petitioner No. 1 received summon from the Superintendent, Customs (P) Headquarter Patna, dated 17.8.1999 purporting to be u/s 110(2) of the Customs Act, 1962. In compliance of the aforesaid notice the petitioner submitted show cause stating that the seized betelnuts are bona fide Indian goods and submitted photostat copies of purchases and booking of betelnuts from Barpeta Road Railway Station to Varanasi City Railway Station (Annexure-3). Similarly other two petitioners, namely, Sushant Kumar Saha and Babu Sana also received show cause and they submitted their show cause annexing the documents in support of their claims.

4. The goods of the petitioners were seized on 28.4.1999. It is contended that as per requirement u/s 110(2) of the Customs Act, petitioners ought to have been given notice within six months of seizure of the goods but since notices were not received within six months, the petitioners became entitled for release of the seized goods u/s 110 of the Customs Act. Notices were received much after six months in breach of Section 110(2) of the Customs Act. The period of six months for giving notice u/s 110(2) of the Customs Act has not been extended by the Collector. It was further contended that it is obvious from the show cause notice that the enquiry has not been completed under Chapter XIII of the Customs Act, 1962 as stated in the show cause notice that Assistant Commissioner, Customs. Guwahati had been requested to verify the genuineness of the firms selling goods, seals tax payment, etc. The seizure has been challenged on other grounds also. It was contended that it was not legal for the Customs authorities to seize the betelnuts on mere suspicion that betelnuts were of foreign origin.

5. Respondent Nos. 1 to 3 have opposed the prayer of the petitioners on the grounds stated in the counter-affidavit filed on their behalf. It was submitted that since adjudication proceeding is going on the writ petition is premature and hence, the petitioners are not entitled for the relief. It is stated in the counter-affidavit that on secret information about the movement of smuggled betelnuts and Posts Dana, the officers of Customs Headquarters (P) Patna intercepted the consignments booked in Brake Van No.13737. The Custom authorities searched the Brake Van in presence of RPF Patna Junction and seized 41 gunny bags of betelnuts and three gunny bags of Posta Dana which were of third country origin. The goods were seized u/s 110 of the Customs Act, 1962 for violation of Government of India, Ministry of Finance Notification No. 9/96-Cus, dated 22-1-1996 issued u/s 11 of the Customs Act, 1962 read with Section 3 of the Foreign Trade (Development and Regulation Act, 1992 on the belief that the goods have illegally been imported into India. In order to ascertain that the betelnuts were of Indian origin or third country origin, trade opinion was also obtained which confirmed that 41 bags of betelnuts unloaded from Brahmputra Mail are not of Indian origin. Trade opinions (Annexures-A and A/1) shows that the opinion was obtained from certain traders dealing with betelnuts.

6. After seizure follow up action was taken and thereafter, adjudication

proceeding was initiated. In adjudication proceeding notices u/s 124 of the Customs Act, 1962 have also been issued to all persons including three petitioners. Adjudication proceeding is pending before the Joint Commissioner, Customs, Patna. It is contended that seizure was effected on 28.4.1999 and notice was issued to the petitioners on 25.10.1999 u/s 124 of the Customs Act and hence, there is no breach of Section 110(2) of the Customs Act. It was further submitted that the goods were not seized merely on suspicion but they were seized on sufficient reason to believe that the goods were smuggled from third country.

7. The petitioners have filed rejoinder to the counter-affidavit reiterating that the respondents have acted without authority of law since it is well-known that betelnuts are grown in Assam and surroundings areas and are sent to other parts of the country on commercial basis. It cannot be suspected that betelnuts were of third country origin. It was contended that in view of Annexure-10 seizure of goods during transit is illegal and without jurisdiction. It was reiterated that show cause notice u/s 124 of the Customs Act has not been given in accordance with law.

8. Learned Counsel for the petitioners has relied on a decision of CEGAT Eastern Bench; Calcutta in *Ram Nath Sah v. Commissioner of Customs (P) INB, Patna 2000 (115) ELT 82 (T)*. In this case, confiscation of betelnuts by the Custom Authorities was held to be illegal on the ground that the Department could not substantiate in the proceeding the charge of smuggling from Indo-Nepal Border. The decision relied upon by the learned Counsel for the petitioners is not relevant at this stage since the proceeding is pending before the court.

9. Learned Counsel for the petitioners has next relied on *Angou Golmei Vs. Vizovolie Chakha Sang* ; decided by a Division Bench of this Court. In this case, the Division Bench of this Court referred to Section 110 of the Customs Act and held that seizure of spices on general belief as regards foreign nature of spices based on visual inspection and trade opinion was not legal exercise of power. It was held by the Division Bench that "none of the documents rules out the possibility of cloves and other spices being found in the hilly areas of the two States. There may not be systematic plantation on commercial scale. But, simply because there is no systematic plantation or data available it would not be reasonable to conclude that any spice coming from Manipur and Nagaland must necessarily be of foreign origin. It needs hardly be emphasised that condition for valid seizure is the belief of the persons, who makes the seizure and not of any other person. Trade opinions of the local traders having been abandoned; the visual inspection and smell by Shri K.R.C. Pillai remain on the basis or seizure besides the information received from the Assistant Security Commissioner, RPF. It is, therefore, doubtful that the seized goods could be identified as of foreign origin on the basis of visual inspection and smell. The seizure thus, really rests not on the basis of identification of the goods as being of foreign origin but on the basis of a general belief that the spices are not grown in the North-Eastern

States, and, therefore, any spice coming from that region must be said to be smuggled. The so-called belief of the officials was at the most more suspicion, far away from belief which could be said to be reasonable. The condition precedent for the exercise of power u/s 110 being absent, the impugned seizure cannot be said to be in accordance with law.

10. The instant case appears to be on similar footing. It was not denied that betelnuts are grown in the State of Assam.

11. Learned Counsel for the Customs, placed strong reliance on the decision of a learned Single Judge of this Court in *Bikaner-Assam Road Lines India Ltd. Vs. Union of India(UOI)*, , in which it was held that the seizure of contraband articles should not be done on suspicion. However, detailed enquiry as to contraband goods before seizure is neither required nor practicable. Learned Single Judge refused to interfere with the seizure of the betelnuts by distinguishing the case reported in *Angou Golmei Vs. Vizovolie Chakha Sang* cited on behalf of the petitioner. The decision is however, distinguishable on facts.

12. Learned Counsel for the Customs also placed reliance on *State of Gujarat Vs. Mohanlal Jitmalji Porwal and Another*, wherein it has been held by the Supreme Court as follows:

Whether or not the officer concerned had entertained reasonable belief under the circumstances is not a matter which can be placed under legal microscope, with an overindulgent eye which sees no evil anywhere within the range of its eye-sight. The circumstance have to be viewed from the experienced eye of the officer, who is well equipped to interpret the suspicious circumstances and to form a reasonable belief in the light of the said circumstances. In the present case, the concerned official had mentioned three circumstances which, made him entertain the reasonable belief that the article was a smuggled one viz.

1. On the basis of the prior information he was alert and was on the look out, watching the movements of respondent No. 1.

2. The chain which had adorned the waistline of respondent No. I was coated with mercury so as to give an appearance of being made of silver.

3. As per the opinion of the goldsmith it was made of pure gold.

13. The decision of the Supreme Court is also distinguishable on facts.

14. The next question for consideration is whether the notice as contemplated under Sections 110(2) and 124 of the Customs Act was issued in accordance with law. Learned Counsel for the petitioners has relied on *Ambalal Morarji Soni Vs. Union of India and Others*, . In that case, the seizure was effected on May 7, 1969 in the premises of the petitioner. Notices under the Customs Act were received on 8th November, 1969. The Division Bench of Gujarat High Court held that on the failure to give notice within six months from the date of seizure as contemplated by Section 110(2) of the Customs Act entitled the person

concerned to get back the goods seized. It was held that the word "given" as used in Section 79 of the Gold Control Act and Sections 110(2) and 124(a) of the Customs Act, means actual communication of the notice to the person concerned.

15. In Assistant Collector of Customs Vs. Charan Das Malhotra, It was held by the Supreme Court:

The right to restoration of seized goods is a civil right which accrues on the expiry of the initial six months and which is defeated by an extension being granted, even though such extension is possible within a year from the date of the seizure. Consequently, such a vested civil right to the respondent cannot be defeated by an ex parte order of extension of time by the Collector. An opportunity to be heard should be available even in a case where extension is granted before expiry of the initial six months, after which period alone the respondent can claim the right to return of the seized goods.

16. Division Bench of Gujarat High Court in Ambala Morarji Soni's case (supra) held as follows:

In view of this decision of the Supreme Court, it is clear that a civil right to get back the seized goods vests in the person concerned if notice is not given to him within the period of six months from the date of seizure. It is clear that in the instant case the goods were seized on May 7, 1969, and the period of six months would, therefore, expire on November 6, 1969, and the right vested in the petitioner from November 7, 1969 to get back the seized goods and gold ornaments. The relevant notices, Annexures B and C to the petition were received by the petitioner on November 8, 1969 and as shown by the affidavit-in-reply, paragraph 7, those notices were posted on November 5, 1969. Giving of the notice contemplated by Section 124 of the Customs Act and Section 79 of the Gold Control Act means that the notice must have been received because as pointed out by the Supreme Court in K. Narasimhiah Vs. H.C. Singri Gowda, the giving of the notice is not complete unless and until it reaches the person concerned or its actual tender to him. Merely despatching of the notice to the address of the person does not complete the giving of the notice. In the instant case, therefore, the fact that the respondents despatched the notices by post on November 5, 1969, would not complete the giving of the notice. The giving of the notice should have been completed on or before November 6, 1969 i.e., notices should have reached the petitioner on or before November 6, 1969 or should have been tendered to him before that date. That was not done in the instant case and, therefore, as from November 7, 1969, the civil right to get back the seized goods accrued to the petitioner.

17. I am in full agreement with the ratio of the decision of the Division Bench of Gujarat High Court in Ambalal Morarji Soni's case (supra). Following the decision of the Gujarat High Court referred to above, I hold that the notices as contemplated u/s 110(2) of the Customs Act were not issued to the petitioners within six months of the seizure of the goods and hence, the petitioners are

entitled to release of the seized goods.

18. For the reasons stated above, this writ application is allowed on both grounds canvassed on behalf of the petitioners as discussed above. Let a writ of Mandamus be issued to the respondents to release the seized betelnuts in favour of the petitioners forthwith, but this will be subject to the result of the pending proceeding.