(2008) 03 DEL CK 0095

In the Delhi High Court

Case No : LPA 770 of 2003 and CM No''s. 511 and 11749 of 2006

Anirudh Singh Katoch APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 20-03-2008

Acts Referred:

Arms (Amendment) Act, 1983 — Section 21, 21(1)
Arms Act, 1959 — Section 10, 11, 3(1), 3(2)
Baggage Rules, 1998 — Rule 1, 10, 2, 3, 4
Customs Act, 1962 — Section 79, 79(2)
Foreign Trade (Development and Regulation) Act, 1992 — Section 3, 5

Citation : (2008) 03 DEL CK 0095

Hon'ble Judges : Dr. M.K. Sharma, C.J;Reva Khetrapal, J

Bench : Division Bench

Advocate : Avatar Singh Rawat, for the Appellant; Suresh Kait, for the Respondent

Final Decision : Dismissed

Judgement

Reva Khetrapal, J.—The challenge raised in this appeal is to the judgment and order of the learned Single Judge dated 1st August, 2003 dismissing the writ petition filed by the appellant.

2. The background facts are as follows. The appellant, who is a citizen of India, had gone to the United States of America (USA) in the pursuit of higher studies in the year 1984. After finishing his studies, the appellant took up a job in the USA with a Medical Instrumentation Firm and since then has resided in the USA as a non-resident Indian. On account of the ill health of his wife, however, the appellant decided to return to India for good. Being an enthusiast of shooting sports, he applied for and obtained the following three gun licenses in India under the Arms Act, 1959:

(i) License No. 482/G(ii)-TTAL/98 dated 3.10.98.

(ii) License No. 3004/G(ii)-TNT/2000 dated 12.7.2000.

(iii) License No. 496/G(ii) TTL/2000 dated 8.12.2000.

3. The appellant had also obtained requisite licenses from the United States of America for acquiring and possessing the three firearms possessed by him. When he decided to transfer his residence to India, he consulted the Indian Consulate in San Francisco, USA regarding the firearms in question and was told that he could take the arms back to India as "Baggage", subject to the condition that he has valid arms licenses from the Indian Government. The appellant having already obtained valid licenses from the Indian Government brought with himself the three licensed firearms mentioned hereinabove.

4. On 01.10.2000, on the appellant''s arrival at the Indira Gandhi International Airport, New Delhi, however, he was told that he would be permitted to take only one firearm under the Transfer of Residence Rules. The appellant was further told by the custom officials that with regard to the two other firearms, he will have to obtain import licenses from the Director General of Foreign Trade. The reasons assigned for detention of the firearms was:

Detained for clearance as per Rules.

5. On 16th February, 2001, one only of the three firearms, viz., a Walther P.P.KS.32 A.C.P. Handgun, was given to the appellant. The appellant thereupon filed an application before the respondent No. 4, i.e., the Director General of Foreign Trade for grant of permission to bring in the remaining two firearms, but the same was refused and the case of the appellant was referred to the Ministry of Home Affairs for their recommendation. Thereafter, the appellant made various representations to various authorities, but to no avail. Ultimately, he served legal notice dated 16th October, 2001 followed by a reminder dated 12th November, 2001, requesting for release of the two detained firearms. By a communication dated 26th March, 2001, the respondents replied that as per the existing policy, there was a ban on the import of firearms under the "Gift Scheme" as well as the "Baggage Rules" and the appellant could not be allowed to import more than one firearm.

6. Being aggrieved by the stand taken by the respondents, the appellant filed a writ petition before this Court seeking for quashing of the detention order and release of the firearms Along with consequential relief. The learned Single Judge by a detailed judgment dismissed the writ petition as being without merit, but permitted the appellant to take back the detained firearms. It was further ordered by the learned Single Judge that on the appellant''s exercising such an option, the said firearms would be released to him as and when he chose to go abroad with the condition that he would not be permitted to bring the same into India.

7. The present appeal has been filed for the setting aside of the aforesaid order. The sole question which arises, Therefore, for consideration is whether a non-resident Indian on transfer of his residence to India can be permitted to bring more than one firearm under the provisions of the Arms Act or the Rules framed

there under or the existing Baggage Rules.

8. The learned Counsel for the appellant, Mr. Arvind Singh Rawat contended that a conjoint reading of the provisions of the Arms Act, the rules framed there under as well as the Baggage Rules clearly show that the appellant was entitled to bring into India, on transfer of his residence, up to three firearms for which he had the licenses. He further contended that the reliance placed upon Rule 8 of the Baggage Rules, 1998 by the respondents to contend that the import of only a single firearm was permissible, was misplaced as was evident from a reading of the said Rule itself. The counsel relied upon Column 1 of Appendix ''F'' of the Baggage Rules to urge that the import of bonafide baggage to the extent mentioned therein was permissible.

9. The learned Counsel for the respondents, Mr. Suresh Kait, on the contrary, contended that the provisions of the Arms Act, 1959, the rules made there under, and the Baggage Rules, 1998 framed u/s 79 of the Customs Act, 1962 regulating the import of firearms were not exhaustive, but were supplemental to other applicable laws. He submitted that the import of firearms is governed by the Export and Import Policy (for short "Exim Policy") as laid down by the Director General of Foreign Trade (DGFT), Ministry of Commerce. Under Sections 3 and 5 of the Foreign Trade (Development of Regulation) Act, 1992, the Central Government can make provisions prohibiting, restricting or otherwise regulating the export and import of goods. In the exercise of the aforesaid powers vested in the Central Government, he contended, the import of firearms is prohibited under Rule 8 of the Baggage Rules, 1998 and the Exim Policy 1997-2002 laid down by the DGFT. "Firearms" fall under the restricted category of import policy as mentioned in the ITC(HS) classification and, as such, the import of firearms is not permitted, except against an import license issued by the DGFT to renowned Shooters/Rifle clubs for their own use and that too, on the recommendation of the Department of Youth Affairs and Sports, Government of India.

10. Mr. Kait also pointed out that though the import of firearms is not permitted under the aforesaid Import Policy, the Ministry of Finance under instructions dated 05.01.1988 has allowed import of one firearm of permissible bore by persons transferring their residence to India, subject to certain conditions. Pursuant to the said instructions, one firearm is allowed under the "Transfer of Residence Form Revision" to persons concerned under the Circular No. 63/95-Cus. dated 07.06.1995, which reads as under:

F.No. 605/74/95-DBK

Transfer of Residence Form Revision

Circular No. 63/95-Cus.

dated 7/6/95

Government of India

Ministry of Finance

Department of Revenue, New Delhi

Subject: Transfer of Residence Form in vogue for claiming benefits of Transfer of Residence under Chapter IV of the Baggage Rules, 1994 - reg. The undersigned is directed to say that it has been brought to the notice of the Board that the Transfer of Residence Form being used in your Collectorate contains a clause that "the goods cleared by the passenger shall not be sold, displayed or advertised or offered for sale until their market price has depreciated to less than 50% of the market price when new," although in terms of the existing provisions, there is no such restrictions on the goods cleared as baggage by a passenger. A copy of the Transfer of Residence Form received with the reference is enclosed for your ready reference. As the Baggage (Conditions of Exemption) Rules, 1975 have already been rescinded, this clause in the Transfer of Residence Form has to be deleted to avoid confusion in the minds of passengers.

2. It is, Therefore, requested that necessary action in the matter may be taken immediately under intimation to the Board.

3. In this connection, it is pointed out that one firearm of permissible bore is allowed to be imported by persons transferring their residence to India under Ministry''s instructions dated 5.1.88 issued from F.No. 497/57/87-Cus.VI. Such release is permitted subject to the condition that the firearm so cleared shall not be sold, transferred, loaned or otherwise parted with, for consideration or otherwise, to any other person in India during the life time of the person concerned. An endorsement to this effect is made in the arm license and the passport of the passenger concerned at the time of clearance of the firearm. Such endorsement shall continue to be made by the customs authorities at the time of clearance of the firearm in question.

Sd/-

(T.R. Kapur)

Under Secretary (Cus.VI)

11. A look at the relevant provisions of the Arms Act in the first instance, in our view, is necessary for determining the question in controversy.

3. License for acquisition and possession of firearms and ammunition.

[1] No person shall acquire, have in his possession, or carry any firearm or ammunition unless he holds in this behalf a license issued in accordance with the provisions of this Act and the rules made there under. Provided that a person may, without himself holding a license, carry any firearm or ammunition in the presence, or under the written authority, of the holder of the license for repair or for renewal of the license or for use by such holder.

[2] Notwithstanding anything contained in Sub-section (1), no person, other than

a person referred to in Sub-section (3), shall acquire, and have in his possession or carry, at any time, more than three firearms; Provided that a person who has in his possession more firearms than three at the commencement of the Arms (Amendment) Act, 1983, may retain with him any three of such firearms and shall deposit, within ninety days from such commencement, the remaining firearms with the officer in charge of the nearest police station or, subject to the conditions prescribed for the purpose of Sub-section (1) of Section 21, with a licensed dealer, or, where such person is a member of the armed forces of the Union, in a unit armoury referred to in that sub-section.

[3] Nothing contained in Sub-section (2) shall apply to any dealer in firearms or to any member of a rifle club or rifle association licensed or recognised by the Central Government using a point 22 bore rifle or an air rifle for target practice.

[4] The provisions of Sub-section (2) to (6) (both inclusive) of Section 21 shall apply in relation to any deposit of firearms under the proviso to Sub-section (2) as they apply in relation to the deposit of any arms or ammunition under Sub-section (1) of that section.

10. License for import and export of arms, etc.

10(1) No person shall bring into, or take out of, India by sea, land or air any arms or ammunition unless he holds in this behalf a license issued in accordance with the provisions of this Act and the rules made there under.

11. Power to prohibit import of export of arms etc." The Central Government may, by notification in the Official Gazette, prohibit the bringing into, or the taking out of India, arms or ammunition of such classes and description as may be specified in the notification.

12. Sub-section (1) of Section 3 of the Arms Act though couched in negative terms mandates a license issued, in accordance with the provisions of the Act and the Rules framed there under, for the acquisition and possession of firearms and ammunition. Sub-section (2) of Section 3 lays down that notwithstanding anything contained in Sub-section (1), no person [other than a person referred to in Sub-section (3)] shall acquire, and have in his possession or carry, at any time, more than three firearms. Section 10, which is also couched in negative terms, mandates that no person shall bring into, or take out of India any arm or ammunition unless he holds a valid license in this behalf in accordance with the provisions of the Act and the rules framed there under. u/s 11 of the Act, the Central Government is vested with the power to prohibit import of or export of arms through notification in the official gazette. Thus, the Arms Act though permits a person to hold three valid firearm licenses and to possess the said firearms, but does not permit import thereof and, as a matter of fact, vests the Central Government with the power to notify the prohibition of import and export of any arm or ammunition. There is no other provision in the Arms Act dealing with the import of arms into India.

13. Section 79 of the Customs Act which is titled "Bonafide baggage exempted from duty" vests the Central Government to make rules subject to which any baggage may be passed free of duty [Section 79(2)]. A look now at Rule 8 of the Baggage Rules, 1998 framed u/s 79 of the Customs Act, 1962. Rule 8 is extracted below:

8. Transfer of residence:

(1) A person who is transferring his residence to India shall be allowed clearance free of duty, in addition to what he is allowed under Rule 3 or, the case may be, under Rule 4, articles in his bona fide baggage to the extent mentioned in column (1) of Appendix F, subject to the conditions, if any, mentioned in the corresponding entry in column (2) of the said Appendix.

(2) The conditions may be relaxed to the extent mentioned in column (3) of the said Appendix.

14. A plain reading of Rule 8 shows that on transferring his residence to India, a person shall be allowed, in addition to what he is allowed under Rule 3 or under Rule 4 depending upon the category of passenger, articles free of duty in his bonafide baggage to the extent mentioned in Column 1 of Appendix ''F''. Column 1 of Appendix ''F'' of the Baggage Rules is as under:

Articles allowed free of duty:

(a) Used personal and household articles, other than those listed Annex I or Annex II, but including jewellery up to ten thousand rupees by a gentleman passenger or rupees twenty thousand by a lady passenger.

15. Thus, it is clear that a person on transferring his residence to India is allowed in his baggage used personal and household articles to the extent mentioned in Column 1 of Appendix ''F'', other than those listed in Annexure-1 or Annexure-2, which means, that the person is not eligible to import the goods listed in Annexure-1 or Annexure-2 to Appendix ''F''. Annexure-2 is not relevant for the present purposes and accordingly, Annexure-1 alone is being reproduced hereunder to show that import of firearms is not permitted under the Baggage Rules since firearms is listed at Serial No. 1 of Annexure-1 of Appendix ''F'':

1. Fire arms.

2. Cartridges of fire arms exceeding 50.

3. Cigarettes exceeding 200 or cigars exceeding 50 or tobacco exceeding 250 gms.

4. Alcoholic liquor and wines in excess of one litre each.

5. Gold or silver, in any form, other than ornaments.

16. From the aforesaid it clearly emerges that Rule 8 stipulates that a person who is transferring his residence to India shall be allowed free of duty clearance

of certain articles in his bonafide baggage to the extent mentioned in Column 1 of Appendix ''F'', subject to the conditions mentioned in the corresponding entry in Column 2 of Appendix ''F''. As already noticed, Column 1 of Appendix ''F'' mentions the articles allowed to be imported without payment of any duty with the exception of those listed in Annexure-1 and Annexure-2. Entry 1 of Annexure-1 mentions firearms and accordingly firearms are not permitted to be imported free of duty, but this by no stretch of imagination can be understood to mean that there is no limitation of bringing any number of firearms into the country and, on the contrary, the only effect would be that they are dutiable items.

17. The submission of the learned Counsel for the appellant is that in so far as Annexures-1 and 2 are concerned, the same also deal with personal goods and household articles, but they are distinguishable on the ground that they are not free of duty, whereas the other used personal and household articles are allowed to be brought into India under the Baggage Rules free of duty. This interpretation placed on the Baggage Rules cannot be sustained for the simple reason that the Baggage Rules merely deal with baggage which is allowed free of duty and baggage which cannot be permitted without clearance of duty. Thus, Rule 1 pertains to the short title and commencement; Rule 2 gives the definitions; Rule 3 deals with passengers returning from countries other than Nepal, Bhutan, Myanmar or China; Rule 4 with passengers returning from Nepal, Bhutan, Myanmar or China; Rule 5 with professionals returning to India; Rule 6 with jewellery; Rule 7 with tourists; Rule 8 with transfer of residence of any person; Rule 9 with unaccompanied baggage and Rule 10 with application of the rules to members of the crew. There is not a whisper in the Baggage Rules as to prohibition of import of any article or baggage and, on the other hand, the rules merely spell out the dutiable items and others and the conditions for relaxation thereof. By a notification No. 137/1990 Cus. dated 20th March, 1990, however, issued with regard to duty on imported goods, imported under Transfer of Residence Rules, firearms cannot be imported by a person on transfer of his residence to India.

18. A look now at the relevant extract of the ITC (HS) classification of export and import items, as contained in Chapter 93 in the Exim Policy, which is extracted below:

EXIM Item Description Conditions relating Import under Code Policy to the policy Public Notice 930320 00 Other sporting, hunting Restricted or target-shooting shotguns, including combination shotgun-rifles Not permitted to be imported except against a license by renowned shooters/Rifle Clubs for their own use on the recommendation of the Department of Youth Affairs and Sports; Government of India 930330 00 Other sporting, hunting Restricted or target-shooting rifles Not permitted to be imported except against a license by renowned shooters/ Rifle Clubs for their own use on the recommendation of the Department of Youth Affairs and Sports; Government of India

19. The aforesaid extract of the Exim Policy clearly shows that the import of sporting, hunting or target-shooting shotguns, including combination shotgun-rifles is not permitted except against a license by renowned Shooters/Rifle Clubs for their own use and that too on the recommendation of the Government of India. Thus, it stands clearly established that the import of firearms, which is governed by the Exim Policy, is prohibited there under, except to the extent stated therein.

20. A conjoint reading of the Arms Act and the Rules framed there under, the Customs Act and the Baggage Rules framed there under and the Exim Policy accordingly leads to the following results. The Arms Act, though permits the appellant to hold three valid firearm licenses and to possess the said three firearms, is altogether silent about the import thereof as the import of firearms is governed by the Exim Policy. It is no doubt true that no person is entitled to bring into India or take out of India any arms unless he holds in this behalf a valid license issued in accordance with the provisions of the Arms Act and the Rules framed there under, but this is as far as it goes. A person is not entitled by virtue of the Arms Act or the Rules framed there under to bring into India such licensed firearms if any provision of law prohibits or restricts the bringing of arms into India. Likewise, as per Rule 8 of the Baggage Rules read with Appendix ''F'' to the Rules and Annexure-1 thereto, it is laid down that firearms on transfer of a residence of a person to India cannot be allowed to be brought into India free of customs duty. It is nowhere laid down in the Baggage Rules that any firearm or firearms can form part of the baggage on payment of duty thereon. Thus, quite clearly, for provisions with regard to import and export, it is the import policy which has to be looked into. "Firearms" fall under the restricted category of import policy mentioned in ITC(HS) classification wherein the import of firearms is not permitted except:

a). against an Import License issued by Director General of Foreign Trade to renowned shooter''s/Rifle Clubs for their own use on the recommendation of the Department of Youth Affairs and Sports, Government of India.

b). one fire arm to persons bringing their personal effects on transfer of residence subject to the condition that (i) the same was in his possession and use abroad for a minimum period of an year (ii) such firearm after clearance shall not be sold, transferred, loaned or otherwise parted with for consideration or otherwise during the life time of person concerned.

21. Read together, it is crystal clear from the aforesaid provisions that only up to one firearm can be cleared on production of a valid license under the Arms Act and on payment of the appropriate duty on the said firearm, in view of exclusion of firearms under Rule 8 read with Appendix ''F'' of the Baggage Rules and para 2 of the notification No. 137/90 Cus. dated 20th March, 1990. The release of this one firearm is by virtue of the exercise of powers by the Central Government, as vested in the Central Government u/s 11 of the Arms Act, and the Central Government having by circular No. 63/95-Cus. dated 07.06.1995 permitted the

release of one firearm under the "Transfer of Residence Form Revision" to the person concerned.

22. It may be mentioned that it was with a view to facilitate the bringing of at least one firearm into India on transfer of residence that the Government of India had issued Circular dated 16th May, 1978 permitting the same subject to the conditions stipulated therein, which included the condition that the person bringing the firearm would not transfer the same to any person in India during his life time, for consideration or otherwise. This decision to allow one firearm was reiterated vide Circulars dated 12th January, 1989 and 7th June, 1995. Thus, the consistent policy of the respondents throughout has been to permit the import of not more than one firearm into the country. The appellant, who would otherwise have been debarred from bringing a firearm into the country by virtue of the Exim Policy and the Baggage Rules framed u/s 79 of the Customs Act, both of which have statutory force, by virtue of the Circular dated 7th June, 1995 has been benefited and enabled to bring at least one licensed firearm into the country. As already noticed, Section 11 of the Arms Act empowers the Central Government by notification in the official gazette to prohibit the bringing into or the taking out of India arms or ammunition of such classes and description as may be specified in the notification and by virtue of this power vested in it, the Central Government by issuance of the aforesaid circular has, on transfer of residence, allowed to be imported to India one firearm of permissible bore subject to the conditions stipulated in the said Circular. The appellant stands to gain by the said Circular and even otherwise has not challenged the said Circular.

23. Accordingly, in our view, the learned Single Judge has correctly interpreted the statutory provisions, the rules and the circulars issued by the Central Government. There is no warrant or justification for our interference with his findings. The judgment of the learned Single Judge is accordingly upheld and the appeal is dismissed. CM Nos. 511/2006 and 11749/2006 also stand disposed of accordingly.