(1975) 06 CAL CK 0027

In the Calcutta High Court

Case No : Appeal No. 168 of 1973

Asstt. Collr. of Cus. (Tech. Cus. Div.) APPELLANT

Vs

Bhimraj Banshidhar RESPONDENT

Date of Decision : 11-06-1975

Acts Referred:

Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 112, 115(2), 156(2), 3

Citation : (1999) 110 ELT 524

Hon'ble Judges : Sankar Prasad Mitra, C.J;S.K. Datta, J

Bench : Division Bench

Advocate : G.P. Kar and P. Mallick, for the Appellant;D. Gupta, Standing Counsel and R.K. Mararka, for the Respondent

Judgement

Sankar Prasad Mitra, C.J.—This is an appeal from a judgment of P.K. Banerjee, J. delivered on September 25,1972. In an application under Article 226 of the Constitution, there were two petitioners before P.K. Banerjee, J., namely, -

(1) Messrs Bhimraj Banshidhar and (2) Messrs Orient Finance Corporation. Both the petitioners were registered partnership firm. Messrs Bhimraj Banshidhar purchased a Hindusthan Ambassador car bearing registration number WBB 4379. The car was also registered in the name of Bhimraj Banshidar. On February 14, 1962, there was an agreement in writing between Orient Finance Corporation and Ram Krishna Arora whereby the Corporation let out the car on hire to Ram Krishna Arora upon terms and conditions agreed between the owners and the hirer. One of the conditions of this agreement was that the Respondent No. 4, Ram Krishna Arora would not use the car or permit it to be used in contravention of any statute and regulations for the time being in force or otherwise in any way contrary to law. The case of the petitioners is that since February 14, 1962, the petitioners lost physical control over the car and with or related to the running and of the car.

2. The relationship between Bhimraj Banshidhar and Orient Finance Corporation

is not very clear. We are told that Arora wanted to purchase the car from Bhimraj Banshidhar. The purchase price was advanced by Orient Finance Corporation and that was why the hire purchase of agreement was between the Corporation and Arora. The relationship between the two partnership firms, however, does not affect the points at issue in this appeal.

3. The petitioners allege that in July 1967, they came to know that the car was seized by the Customs officers on duty near Guma on Jessore Road on July 13, 1967 on the ground that on Chatai of Cinnamon of foreign packing was recovered from the car. Thereafter, through Ram Krishna Arora, the Respondent No. 4, the petitioners requested the Assistant Collector of Customs, the Respondent No. 1 to release the car as the petitioners had no connection whatsoever with the alleged transportation of Cinnamon; but on January 8, 1968, the petitioners received two purported show cause notices u/s 112 and Section 115(2) of the Customs Act, 1962. These two show cause notices have been challenged in the instant proceeding.

4. P.K. Banerjee, J. has upheld the notice u/s 112 and has struck down the notice u/s 115(2).

5. The present appeal has been filed by the Customs authorities against the order of P.K. Banerjee, J. setting aside the notice u/s 115(2). There is also a cross-objection by Bhimraj Banshidar and Orient Finance Corporation to the order of P.K. Banerjee, J. upholding the notice u/s 112.

6. Mr. G.P. Kar, learned Counsel for the Customs authorities has urged before us that both the petitioners in the Trial Court were partnership firms registered under the Indian Partnership Act. These partnership firms were not legal entities; they were not citizens of India; and no fundamental rights enjoyed by them could be affected. The application, therefore, under Article 226 of the Constitution by the two partnership firms is wholly misconceived, according to Mr. Kar and is not maintainable.

7. A preliminary objection of this nature was taken before the Supreme Court in Andhra Industrial Works Vs. Chief Controller of Imports and Others, . In paragraph 8 at page 1541 of the Judgment, the Supreme Court deals with this preliminary objection in these words. "We find no merit in the preliminary objection that the writ petition on behalf of the ''firm'' is not maintainable since ''firm'' stands for all the partners collectively, the petition is to be deemed to have been filed by all the partners who are citizens of India. We, therefore, negative this objection".

8. This judgment of the Supreme Court provides the answer to Mr. Kar''s preliminary point which is overruled.

9. We will now come to Section 115(2) of the Customs Act, 1962. The Sub-section is as follows :-

"Any conveyance or animal used as a means of transport in the smuggling of any goods or in the carriage of any smuggled goods shall 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."

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10. It is clear that the Sub-section has two limbs. In the first limb it has to be established that smuggling was done without the knowledge or connivance of the owner, his agent, if any and the person in charge of the conveyance or animal. In the second limb the persons answering the charge would have to show that they had taken all precautions specified in the rules.

11. It is admitted that no rules have yet been framed by the Central Government under this Sub-section. In Section 156(2)(c), the Central Government has been specifically given the power to frame rules relating to the precautions that shall be taken by the owner, his agent and the person in charge of any conveyance or animal for the purpose of Sub-section (2) of Section 115, but the Central Government has not yet chosen to exercise this power. Our attention has been drawn to one of the notices to show cause (incidentally both the notices are on the same terms). A copy of one of these notices has been printed on pages 56 to 60 of the Paper Book. By this notice Messrs Bhimraj Banshidhar is asked to show cause why the car and the cinnamon should not be confiscated inter alia u/s 115(2) of the Customs Act, 1962. The notice begins with the words "whereas on the evidence indicated hereinbelow there are reasons to believe that goods as shown in the Schedule have been imported by land from foreign (Pakistan) territory into India on or before 13th July, 1967 without, inter alia, a valid import license". The evidence indicated has been set out in pages 60 to 64 of the Paper Book paragraph 10 at page 64 runs thus.

"That neither Messrs. Bhimraj Banshidhar nor Shri Ram Krishna Arora nor Messrs. Orient Finance Corporation lodged any claim or ownership over the seized Private Car No. WBB - 4379 nor any of them furnished any evidence documentary or otherwise to show that all precautionary steps were taken to prevent the said private car being for unauthorised purposes like transportation of smuggled goods by the said car."

12. It is clear from paragraph 10 quoted above that so far as Section 115(2) is concerned the notice is restricted to the second limb of the Sub-section we have referred to. Since no rules have been framed as yet a notice under the second limb of Sub-section (2) of Section 115 is obviously bad and must be struck down.

13. Arguments were advanced before us on the applicability of the doctrine of severability to the two limbs of Section 115(2), but in this case we do not find any necessity for expressing our views on these arguments. It is enough for our purposes to say that the notice u/s 115(2) in the instant case is bad because it

refers to precautions which had to be prescribed by rules that have not yet been framed.

14. In this view of the matter, in our opinion, P.N. Banerjee J. was justified in striking down the notice u/s 115(2). The appeal is, therefore, dismissed. There will be no order as to costs.

15. We now proceed to deal with the cross-objection. Section 112 of the Customs Act, 1962 is in these terms :

"112. - Penalty for improper importation of goods, etc., any person.

(a) * * * * *

(b) Who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation u/s III, shall be liable :-

(i) In the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force to a penalty not exceeding five times the value of the goods or one thousand rupees, whichever is greater.

(ii) In the case of dutiable goods, other than prohibited goods, to a penalty not exceeding five times the duty sought to be evaded on such goods or one thousand rupees, whichever is greater."

16. Mr. Gupta, appearing for the partnership firms, has urged before us that on the evidence disclosed by the Customs authorities it does not appear that his clients were in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing or in any other manner dealing with the goods alleged to have been illegally imported. To come within the section says Mr. Gupta, some kind of overt set, some involvement, some mixing up with the goods, has to be established before a person can be said to be concerned in carrying, etc., envisaged by the section learned Counsel in support of his agreement has relied on the Supreme Court''s decision in East India Commercial Co. Ltd.,Calcutta and Another Vs. The Collector of Customs, Calcutta, . We are on the facts unable to accept the contentions of Mr. Gupta at page 61 of the Paper Book, dealing with the evidence on which the show cause notices were based the Customs authorities have stated -

"As regards ownership of the car under seizure the enquiry revealed that as per blue book of the car Messrs. Bhimraj Banshidhar of 180, Mahatma Gandhi Road, Calcutta-7 are the owners and one Shri Ram Krishna Arora, is the hire-purchaser of the Car. The hire-purchase of agreement was however executed by Messrs. Orient Finance Corporation of 180, Mahatma Gandhi Road, Calcutta-7, a sister concern of Messrs. Bhimraj Banshidhar. The dues in respect of the car have not yet been paid in full by the hire-purchaser and as such the said Bhimraj Banshidhar are to be treated the legal owner. The enquiry further revealed that

Shri Ram Krishna Arora, the hire-purchaser, actually handed over the car to Shri Gour Kinkar Acharya without any registered document although the car was in fact under possession and control of Shri Acharya since 14th February, 1962 till the date of seizure".

17. The case of the Customs authorities, therefore, is that on the date of the seizure the car was in possession and control of Gour Kinkar Acharya who was not the registered owner of the car the registered owner was Bhimraj Banshidhar. A sister concern of Bhimraj Bansidhar, namely, Orient Finance Corporation has hire-purchased the car to Ram Krishna Arora who had handed over the car to Gour Kinker Acharya. If the car was used for purpose of smuggling, on the facts alleged by the Customs authorities it is impossible at the moment to hold that the two petitioner firms were not in any way concerned with smuggling operations. Now, Gour Kinkar Acharya came to be in possession of the car is a matter for investigation and until that investigation is completed the position as to responsibility for smuggling would not at all be clear. In these circumstances, we are of opinion that the notice to show cause u/s 112 of the Customs Act, 1962 has to be sustained. In the result the cross-objection is dismissed. There will be no order as to costs.

