

(1966) 04 CAL CK 0013
In the Calcutta High Court
Case No : Matter No. 101 of 1964

Charandas Malhotra

APPELLANT

Vs

Assistant Collector of Customs and Others

RESPONDENT

Date of Decision : 19-04-1966

Acts Referred:

Customs Act, 1962 — Section 110(1), 110(2)

Citation : AIR 1967 Cal 376 : (1968) CriLJ 33

Hon'ble Judges : B.N. Banerjee, J

Bench : Single Bench

Advocate : R.C. Deb and D.K. Sen, for the Appellant; G.P. Kar and R.N. Pyne, for the Respondent

Judgement

B.N. Banerjee, J.—The petitioner carries on business as a dealer in watches, clocks, time-pieces, etc., under the trade name, "Wallton Watch Company", at No. 12 Chowringhee Road, Calcutta. On March 19, 1963, there was a search of the business premises of the petitioner conducted by the Rummaging Staff of the Customs Department. In course of the search 218 pieces of foreign made watches were found in the premises, but, on scrutiny of whatever documents the petitioner could produce at that time, 87 watches were released and 131 watches were included in a seizure list and were seized. Towards the end of the search the petitioner made the following statement, which was recorded by an officer of the Customs Department:

"I, Sri Charan Das Malhotra son of late Harbhas Rai Malhotra do hereby state that I have produced all the watches to you in my possession. I do not have any watches anywhere else for production to you.

I have produced bills against some of the watches for your inspection. I am, however, very unwell and I am not in a position to produce further vouchers or receipts against watches shown in the inventory I shall, however, produce the same for your inspection as early as possible.

I do state that I purchased twenty four watches from the Custom House sales in the year 1957 or 1958. Out of this quantity I have sold all except two watches which I have produced to you and which I surrender herewith to you.

I do hereby state that I make this statement voluntarily."

Thereafter, between March 28, 1963 and May 6, 1963, the petitioner wrote several letters either to the respondent Assistant Collector or to the Additional Collector of Customs, either offering to produce further documents or asking for expeditious conclusion of the investigation and release of the said watches. Out of the said letters, I need quote below the letter dated May 6, 1963:

"In connexion with the above I have to state that most of the watches are very old stock, some of which were previously owned by my concern named Welcan Watch Co., 170 Harrison Road, Calcutta, which was closed in the year 1955 and its stock in trade was then transferred to this concern.

Two watches namely Drive Geneva and Record were seized by the Rummaging Staff of your department during their raid of my said shop, Welcan Watch Co. on 16-2-55 and were subsequently released as per your File No. S 12 (IV/T) 26/55P.

Purchase vouchers of a watch was destroyed by white ants and the same was shown to the I. O. concerned. Vouchers for other watches are being submitted to your office for perusal and verification.

You are requested to please expedite investigation and order early release."

To the above letter, a Rummaging Inspector of the Customs Department sent The following reply, on June 21, 1963:

"Please refer to your letter dated 6th May, 1963 forwarding vouchers, bills, invoice, etc. relating to the seized watches. These vouchers, however, do not cover all the watches seized from you and your representative Shri Sundarlal Lala who came to deliver the abovementioned vouchers and assured that the remaining vouchers would be submitted as soon as possible but none of them has since been forwarded.

You are accordingly requested to send the wanting vouchers immediately and at least within a week hereof. You are also requested to produce your Stock Book within the same period for verification of your Stock of watches."

The petitioner sent the following reply to the above letter, on July 5, 1963:

"With reference to the above I have to state that I have already submitted to you a letter from Messrs. Benson Watch Co., 31, Dharamtolla Street, Calcutta regarding the purchase of some watches from them.

One watch with the brand name EMES was purchased by me long ago from Messrs. M. S. Watch Co., 138, Radha Bazar Street, Calcutta. Unfortunately I have either lost the purchase voucher or it has perhaps been eaten by moth which destroyed some of my old records. I have, however, requested the said party to

look up the record at their end and supply me a copy, if possible. They are doing the needful and may comply soon. You are requested to kindly summon them and get the watch inspected by them and I am sure that they will at once certify that the watch was sold by them long ago.

As regards stock book I regret to state that my business being on a very small scale I did not maintain a description-wise stock book. "

On consideration of the evidence produced by the petitioner, the respondent Assistant Collector directed release of 11 watches, out of the number of watches seized, by his letter dated September 18, 1963 and thereafter, by another letter dated February 27, 1964, directed release of 10 more watches. At last, on March 6, 1964, the respondent Assistant Collector sent to the petitioner a notice, u/s 124 of the Customs Act, 1962, couched in the following language:

"In course of search on 19-3-63 of the shop of M/s Wallfon Watch Co. 218 Gents and Ladies watches of foreign origin, were found. The proprietor of the shop Shri Malhotra could not, however, produce on the spot documents to cover legal importation of 131 watches and made a statement that he would produce the vouchers and the receipts as early as possible. The watches i.e. 131 pcs. were accordingly seized and brought to Custom House

2. On 7-5-63 M/s Wallton Watch Co. produced a number of vouchers to cover 125 pcs. of watches and assured that they would produce vouchers in respect of the remaining 6 watches later on but the party failed to do so in spite of repeated reminders.

3. On scrutiny of these vouchers and on completion of enquiries so far made, 21 pcs. of watches have been released to the party. In case of most of the remaining watches, the parties or firms from whom the watches in question were brought by M/s. Wallton Watch Co. either do not exist or they stated to have destroyed their old records and are, therefore, not in a position to furnish the particulars of legal importation of the watches sold by them.

4. Importation of the watches without a valid Import Trade Control Licence is prohibited u/s 111(d) of the Customs Act, 1962 read with Section 3(1) of the Imports and Exports (Control) Act 1947 and in accordance with the provisions laid down in para 2 of Section 123 of the Customs Act 1962, the burden of proving that the watches are not smuggled shall be on the person from whose possession the watches were seized. M/s. Wallton Watch Co. have failed to prove the legal importation of the remaining 110 pcs. of watches.

5. M/s. Wallton Watch Co. are accordingly directed to explain within a week from the date of receipt of this Notice why the aforesaid 110 pcs. of watches should not be confiscated u/s 111(d) of the Customs Act, 1962 read with Section 3(2) of the Imports and Exports (Control) Act and the notifications issued thereunder. They should also explain within the same period why penal action also should not be taken against them in accordance with provision of Section 112 of the

Customs Act, 1962.

6. The written explanation should be submitted along with all the original or certified copies of the documentary evidence on which they rely in support thereof to the undersigned."

Aggrieved by the notice, the petitioner moved this Court, under Article 226 of the Constitution, praying for a mandate upon the respondents (the Assistant Collector of Customs, the Collector of Customs and the Union of India) directing them to withdraw or cancel the notice, dated March 6, 1964, and return the watches seized by them and further for a Writ of Prohibition prohibiting the respondent Assistant Collector of Customs from taking proceedings under the impugned notice. He obtained the present Rule, on March 24, 1964 and also an interim injunction restraining the respondents from taking steps under the impugned notice.

2. The first point urged in support of the Rule was that because of efflux of time the seized watches were liable to be returned to the petitioner, under the provisions of Sub-section (2) of Section 110 of the Customs Act. In order to appreciate this argument it is necessary for me to refer to the language of Section 110 of the Customs Act which reads as follows:--

"110. (1) If the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods: Provided that where it is not practicable to seize any such goods the proper officer may serve on the owner of the goods an order that he shall not remove, part with or otherwise deal with the goods except with the previous permission of such officer.

(2) Where any goods are seized under Sub-section (1) and no notice in respect thereof is given under clause (a) of Section 124 within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized:

Provided that the aforesaid period of six months may, on sufficient cause being shown, be extended by the Collector of Customs for a period not exceeding six months.

(3) The proper officer may seize any documents or things which in his opinion, will be useful for, or relevant to, any proceeding under this Act.

(4) The person from whose custody any documents are seized under Sub-section (3) shall be entitled to make copies thereof or take extracts therefrom in the presence of an officer of customs."

The seizure was effected on March 19, 1963. The six months from the date of seizure expired on September 19, 1963. The petitioner alleges that time was not extended after the expiry of six months" time. But it appears from paragraph 17(b) of the affidavit-in-opposition, dated June 24, 1964, that there was a prayer made on September 18, 1963 for extension of time, under the proviso to Section

110(2) and the respondent Collector of Customs granted an extension of time by four months, on September 19, 1963, on being satisfied that apart from the local enquiries already made further investigation was necessary to be made at Delhi and Bombay This extended period was due to expire on January 19, 1964 It further appears from the third sub-paragraph of paragraph 17 (b) of the said affidavit-in-opposition:

"Although the enquiries at Delhi and Bombay were concluded within the extended period, there was hardly any time left to compile the reports of enquiry and to draw up the show cause notice within the said period. As such, a further extension of time for a period of further two months was sought which was granted by the Additional Collector of Customs thus extending the time till 7th March 1964."

Since the date when this further extension of time was applied for and for the date when this extension was granted were not stated in the extract quoted above. I directed further and better affidavit by the respondents. Thereupon, two affidavits were filed, one by Sailendra Nath Gupta, a Preventive Officer and the other by Sachhidananda Banerjee, who was the Superintendent of Preventive Service at the material time. In the affidavit by Sailendra Nath Gupta, it is stated:

"Another extension of two mouths was sought for on the 3rd January 1964 for completion of the enquiry. The Additional Collector was pleased to grant the extension for a further period of two months."

In the affidavit by Sachhidananda Banerjee, it was stated:

"As the enquiries could not be completed within the extended time, a further period of four months" time was prayed for on 3-1-1964 and on 20-2-64..... the Additional Collector of Customs granted further two months" extension for serving show cause notice. The enquiries were thereafter completed and a show cause notice was issued on the petitioner on 6th March 1964."

It was contended on behalf of the petitioner that the proviso to Section 110(2) authorises only one extension of time, upto a maximum period of six mouths but no second extension of time. I am not impressed by this argument. Proviso to Section 110(2) does not limit the authority of the Collector of Customs to grant only one extension of time upto six months, at the outset. It authorises the Collector to grant extensions of time not extending six mouths at a time. A similar point, under Sec. 62 of the Motor Vehicles Act, came up before the Supreme Court in The Madhya Pradesh State Road Transport Corporation Vs. The Regional Transport Authority, Raipur, . Section 62 of the Motor Vehicles Act reads :

"A Regional Transport Authority may without following the procedure laid down in Section 51, grant permits to be effective for a limited period not in any case to exceed four months, to authorise the use of a transport vehicle temporarily."

Explaining the section, Ramaswami J. observed:

"We are of the opinion that the words "in any case" do not mean "in any circumstances". The section means that at any one time the Regional Transport Authority is not permitted to issue to any person a temporary permit for a period exceeding four months, but if a temporary need persists, as, for example where the formalities u/s 57 are not completed within a period of four months, it would, in our opinion, be permissible for the Regional Transport authority to grant a second temporary permit in order to meet the temporary need. We should, of course, make it clear that the Regional Transport Authority cannot abuse its power and go on granting permits in quick succession and not take speedy action for completing the procedure u/s 57 of the Motor Vehicles Act."

On a parity of reasoning, I hold that if the Collector of Customs finds that for good reasons the investigation could not be completed and the statutory notice u/s 110(2) issued within the original period of six months, he may grant as many extensions of time as the completion of the investigation and issue of notice may reasonably require but in no case exceeding the period of six months at a time.

3. It was further contended on behalf of the petitioner that the first extension of time was to expire on January 19, 1964. Assuming that a second extension of time was prayed for on January 3, 1964, the prayer was not granted until February 20, 1964. In the meantime, the first period of extension expired and thereafter the watches, which had been seized, should have been returned to the petitioner. It was contended that the petitioner could not be deprived of the benefits of this state of affairs, under Sub-section (2) of Section 110, by a subsequent extension of time under the proviso to Section 110(2). Now, "extension" is a term properly used for the purpose of enlarging or giving further duration to any existing right but does not import the revesting of an expired right; that would not be an extension but a recreation. (Vide Strouds Judicial Dictionary (1952)--Vol. 2). But although this is so with respect to a right, it is not so when a statute expressly confers upon an authority a power to extend time. Thus, where there is a prescribed time for doing a thing but an express power is given to an authority to extend that time such power may be exercised even after the prescribed time has expired unless of course there be an express limitation to the contrary, I do not, therefore, find much substance in this contention.

4. It was also contended that the extension of time was without notice to the petitioner and that made extension bad. I do not find anything contained in Section 110(2) proviso, which requires the petitioner being notified before the grant of extension of time. All that is required is that extension of time may be granted only on sufficient cause being shown. It is not the case of the petitioner that the order of extension, if at all made, was made on insufficient grounds.

5. The next branch of the argument in support of the Rule was that the search of the business premises of the petitioner and the seizure of watches were made in the absence of reasonable belief that the watches were liable to confiscation under the Customs Act, 1962. What was really contended was that at the time

when the search was made or the seizure effected, the Customs authorities had no material on which they could form the reasonable belief that the watches had been imported, in contravention of the Act of 1962, and that it was that belief which really mattered and not any belief subsequently formed. In support of this contention my attention was drawn to *M.G. Abrol and Another Vs. Amichand Vallamji and Others*, in which, construing Section 178-A of the Sea Customs Act 1878 couched in almost similar language, Shah J. (Mudholkar Acting C. J. agreeing with him) observed :

"The restrictions placed upon the powers of the Customs Officers u/s 178-A of the Act cannot be lightly treated. They are serious and it is necessary that the Customs Officers themselves should realise the importance thereof. They are intended to check the exercise of the powers given to them u/s 178-A of the Act arbitrarily and without any foundation at all, to the harassment of the general public. It would be necessary therefore, that before any person could be called upon to prove that the goods seized from him were not smuggled goods, the Customs Officer making the seizure must proceed upon the foundation of reasonable belief inspired in him by some definite materials by way of definite information or otherwise; so that he could be said to seize the goods in the reasonable belief that they were smuggled goods. It will be then for the Inquiry Officer to enquire and be satisfied as to whether the Customs Officer who had seized the goods was not wrong in his belief that the goods that he had seized were smuggled goods, or, in other words, he had a reasonable belief that the goods were smuggled goods at the time of seizure. In case the Inquiry Officer is satisfied that the goods were seized in such a reasonable belief he would thereafter issue to the person from whom the goods were seized and call upon him u/s 178-A of the Act to prove that the goods were not smuggled goods.

In our opinion, therefore, it is difficult to accept Mr. Gupta's contention that the reasonable belief, which is contemplated by Section 178-A of the Sea Customs Act, may either be the belief in the mind of the Inquiry Officer at the stage of the inquiry, or in the mind of the seizing officers themselves even after the seizure took place. In our opinion, there is one and only one construction possible of this section, so far as the point of time at which the reasonable belief should exist in regard to the seizure of any smuggled goods is concerned and the construction is that wherever the goods are seized, the officer seizing the goods must at the time of seizure have a reasonable belief in his mind that the goods that he was seizing were smuggled goods. Any subsequent acquisition of such belief would be of no avail."

My attention was further drawn to the judgment of the Supreme Court in *The Collector of Customs, Madras Vs. Nathella Sampathu Chetty and Another*, in which Ayyangar J. observed that "the reasonableness of the belief has to be judged by all the circumstances appearing at that moment." I agree respectfully with the observations of their Lordships of the Bombay High Court and am bound by the observations in the judgment of the Supreme Court referred to above.

Section 110 of the Customs Act, 1962 does not authorize fishing enquiries and harassing seizure of goods, in the expectation that some ground for confiscation might be discovered or spelled out through random search. The belief must be objectively formed. In the instant case, however, the argument does not help the petitioner. The affidavit in opposition, dated June 24, 1964, was no doubt not informative enough as to why the search was conducted. But pursuant to my direction, there were further affidavits filed and it appears from one of the affidavits affirmed by Sachnidananda Banerjee, Superintendent of the Preventive Service at the material time, as follows :--

"On the 18th of March, 1968, I received information from Shri L.R. Williams, Inspector Rummaging Intelligence, who was then working under me (who has since resigned and left India), to the effect that watches and consumer goods imported unlawfully were kept in the premises of certain dealers including M/s Walton Watch Co. of 12, Chowringhee Road, Calcutta. After discussion with Shri Williams I issued a Search Authorisation No. 32/P, dated 18th March 1968, u/s 105 of the Customs Act 1962, as I had reason to believe the said information. I accordingly authorised Preventive Officer Shri Sailendra Nath Gupta to search the said shop of M/s Walton Watch Co., at premises No. 12, Chowringhee Road, Calcutta.

The search Authorisation was executed by the said Shri Sailendra Nath Gupta with the help of other officers on 19-8-68 as a result of which 131 watches were seized and a report was submitted to me on 2-3-68."

Sailendra Nath Gupta mentioned in the quotations above supports the version of Sachnidananda Banerjee in a separate affidavit affirmed by him on the same day. Thus, the Customs authorities proceeded on definite information in directing a search of the business premises of the petitioner and must not be accused of starting a fishing enquiry. The discovery of a large number of watches of foreign make, all of which could not be satisfactorily established to have been lawfully imported or acquired, at the time when the search was being conducted, was a circumstance relevant to the formation of the belief envisaged u/s 110(1) of the Customs Act, 1962. This is a view which also finds support from the judgment of Supreme Court in, Pukhraj Vs. D.R. Kohli, . I, therefore, overrule this branch of the argument as well.

6. It was lastly contended that action u/s 110 could be taken if the watches were liable to confiscation under the Customs Act, 1962. In this context, my attention was drawn to Sections 2(33) and 2(89) of the Customs Act, 1962, respectively defining "prohibited goods" and "smuggling". It was submitted that the impugned notice did not expressly state that the watches were suspected to have been smuggled into India, after February 1, 1962, when the Customs Act, 1962 came into force, and that made the action taken and the notices issued bad. This argument is premature at this stage. There is nothing to show that the seized watches were imported before February 1, 1962. I cannot, therefore, quash the impugned notice on the ground urged before me,

7. All the arguments urged in support of the Rule therefore fall and I discharge the Rule with costs--hearing fee being assessed at 10 Gms. Interim injunction stands vacated.

8. I make it clear that nothing contained in this Judgment should be construed as expression of any opinion on the point that the watches were liable to confiscation. That the Customs authorities must decide on the evidence adduced or collected.