(1952) 09 BOM CK 0002

In the Bombay High Court

Case No : Misc. Petition No. 196 of 1952

Chhogumal Kodumal APPELLANT

Vs

Collector of Customs RESPONDENT

Date of Decision : 04-09-1952

Acts Referred:
Sea Customs Act, 1878 — Section 167(37), 167(8), 182, 19, 29

Citation : (1952) 09 BOM CK 0002

Hon'ble Judges : Tendolkar, J

Bench : Single Bench

Advocate : R.D. Banaji and Maganmal, for the Appellant;

Judgement

1. This is a petition for a writ of certiorari for quashing certain orders made under the provisions of the Sea Customs Act, or for a writ of prohibition or mandamus or a direction in the nature of prohibition or mandamus restraining the Union of India from enforcing the said orders.

2. The petitioner Chhogumal Kodumal carries on business in the name of Messrs. Kodumal Motiram. On the 24th of September, 1949 Messrs Hassanali Bros. indented under their import licence 9,000 dozens optical frames from Messrs. Paul E. Sernau of New York. They sold the goods before arrival to Messrs. Hansraj Shadilal Jain, who in their turn sold them to Messrs. Kodumal Motiram on the 10th of October, 1949. The consignment arrived packed in 30 cases on the 9th of January, 1950 and was cleared on behalf of Messrs. Hassanali Bros. upon payment of customs duties and other charges. It was subsequently discovered that these cases contained not optical frames but goggles. Import of goggles was at this time prohibited and therefore by a notice to show cause addressed to Messrs. Hassanali Bros. the Collector of Customs called upon them to show cause why action should not be taken against them u/s 167(8) of the Sea Customs Act and also u/s 167(37). An inquiry was held, and as a result of the inquiry the Collector of Customs, Bombay, by an order dated the 5th July, 1950 ordered confiscation of these goods and also imposed a penalty of Rs. 2,500 on Messrs.

Hassanali Bros. and of Rs. 5,000 on Mr. Chhogumal Kodumal as a person concerned in the commission of the offence u/s 167(8) and section 167(37) of the Sea Customs Act. Against this order there was an appeal to the Central Board of Revenue, and the Board by its order dated the 7th of August 1951 modified the Collector''s order only to the extent of reducing the penalty imposed on the petitioner from Rs. 5,000 to Rs. 2,500. Against this decision of the Revenue Board a representation was made to the Central Government, and the Government of India by their order dated the 19th April, 1952 saw no reason to interfere with the order passed by the Central Board of Revenue. It is these orders that have been challenged before me.

3. The ground on which the order of the Collector of Customs has been challenged is that the petitioner was entitled to notice of any inquiry relating to the confiscation of the goods, and in any event no penalty could be imposed upon him without his being heard, the imposition of such a penalty without being heard being contrary to the fundamental principles of justice.

4. Now, under the Sea Customs Act the authority entitled to adjudicate on confiscation and to impose penalties is inter alia the Customs Collector by virtue of section 182(a). That section states such confiscation, increased rate of duty or penalty may be "adjudged". It seems to me to be inherent in the use of the word "adjudged" that the authority empowered to adjudge is acting in a quasi-judicial capacity, and therefore an order made u/s 182 of the Sea Customs Act is liable to be quashed on a writ of certiorari.

5. Now, turning next to the provisions of section 167(8), the essence of the offence which is alleged to have been committed in relation to the goods is that they were imported in contravention of import regulations which prevented the import of goggles. The penalty prescribed for the offence is (a) confiscation and (b) a penalty not exceeding three times the value of the goods or not exceeding Rs. 1,000 which may be imposed on any person concerned in any such offence. Now, u/s 29 of the Sea Customs Act, on the importation of any goods the owner of such goods has to declare in the bill of entry or shipping bill the real value, quantity and description of such goods to the best of his knowledge and belief, and has to subscribe a declaration of the truth of such statement at the foot of such bill. Therefore, the offence of importing any goods in contravention of any restrictions placed on the import of goods by the Union of India u/s 19 of the Sea Customs Act is committed by the owner of the goods, the word "owner" being used in the sense of the person who fills in the bill of entry or the shipping bill and makes the requisite declaration in respect thereof, such person being the importer of the goods who holds an import license. It is obvious, therefore, that in an inquiry concerning the commission of such an offence the "owner" of the goods in the sense that I have indicated above must have notice. That owner in the present case was Messrs. Hassanali Bros. and a notice was duly addressed to them to show cause why action should not be taken against them. But it is Mr. Banaji''s contention on behalf of the petitioner that in addition to Messrs.

Hassanali Bros. any person interested in the goods, and certainly the true owner of the goods, should have notice of an inquiry relating to the commission of an offence u/s 167(8) before the goods are ordered to be confiscated. His contention is that such persons have a property right in the goods, and they ought not to be deprived of such property right without being given an opportunity of being heard. Now, the only right conferred upon a citizen by the Constitution in respect of his property is that he shall not be deprived of his property save by authority of law; and in this case the authority for depriving a person of his property right in case of confiscation is to be found in the provisions of the Sea Customs Act. I do not find in the Act any duty cast on the Customs officer to search for a person or persons who may be interested in the goods. The Customs officer is entitled to treat the person who has signed the bill of entry or the shipping bill and made the requisite declaration u/s 29 of the Sea Customs Act as the true owner of the goods and to give a notice to him and him alone. Others who derive title through such an owner would no doubt have notice of such an inquiry through him and should make themselves heard also through him; and in this case it is admitted that Messrs. Hassanali Bros. in their turn gave notice to Messrs. Hansraj Shadilal Jain and the latter in their turn gave notice to Messrs. Kodumal Motiram of the inquiry held by the Collector of Customs. In my opinion, therefore, there was no obligation on the Customs Collector under the law to give any notice to a person other than the owner Referred to in section 29 of the Sea Customs Act in respect of an offence u/s 167(8) in so far as it is proposed to confiscate the goods.

6. The position, however, is obviously different when you come to a penalty that may be imposed on any person concerned, in any such offence. It is a fundamental principle of natural justice that no person shall be punished without being heard, and therefore quite obviously no penalty can be imposed on any person without being given a reasonable opportunity of being heard as to why the penalty should not be imposed upon him. Therefore at any stage at which the Customs Collector is of opinion that a person other than the owner Referred to in section 29 of the Sea Customs Act is concerned in an offence u/s 167(8), it is, in my opinion, his duty to give notice to such person to show cause why a penalty should not be imposed upon him as a person concerned in the commission of the offence.

7. Turning next to section 167(37), the offence consists, shortly stated, of giving a wrong description of goods either in the bill of entry or in the shipping bill, and the penalty for such offence is, as in the case of section 167(8), confiscation as also a penalty which may be imposed on every person concerned in any such offence. In so far as the confiscation of goods is concerned, since the essence of the offence is a wrong description of the goods, and such description is given only by the owner who fills in the bill of entry or the shipping bill u/s 29, so far as the penalty of confiscation is concerned, in my opinion, notice need not be given to any one other than the owner. But when it is sought to penalise any other person as a person concerned in any such offence, quite obviously he is entitled

to a notice to show cause why a penalty should not be levied upon him. I am therefore clear in my opinion that before imposing a penalty on the petitioner, the Customs Collector should have given a notice to him to show cause why such a penalty should not be imposed and in so far as he failed to do so, he acted contrary to the well-recognised principles of natural justice; and his order in so far as it seeks to impose a penalty upon the petitioner ought to be set aside. This order has been modified by the Central Board of Revenue and the order of the Central Board of Revenue has been confirmed by the Central Government, with the result that today the final order is that of the Central Government. That order will be set aside in so far as it concerns the penalty imposed on the petitioner.

8. With regard to confiscation, although I have held that the petitioner was not entitled to a notice and the order is not bad on that ground, it was urged that the order is bad by virtue of the provisions of section 183 of the Sea Customs Act. That section provides as follows :-

"Whenever confiscation is authorised by this Act the officer adjudging it shall give the owner of the goods an option, to pay in lieu of confiscation such fine as the officer thinks fit."

9. There is no doubt that the provisions of this section are mandatory; and it is admitted that in the present case no such option was given. But this section has been modified for a limited period by a subsequent Act. The Imports and Exports (Control) Act, 1947, Section 3, sub-section (1) provides that the Central Government may Prohibits restrict or control the import of any goods. Then sub-section (2) provides :

"All goods to which any order under sub-section (1) applies shall be deemed to be goods of which the import or export has been prohibited or restricted u/s 19 of the Sea Customs Act, 1878 and all the provisions of that Act shall have effect accordingly; except that section 183 thereof shall have effect as if for the word "shall" therein the word "may" were substituted."

10. Now, in the present case the import of goggles was prohibited under the provisions of section 3(1) of the Act; and therefore if the goggles were imported in contravention of the prohibition and the penalty for the offence was confiscation, the adjudging authority was not bound to give the option to pay in lieu of confiscation any fine to the owner of the goods. It was left to the discretion of such authority whether to give such an option, for the deliberate change of the word "shall" into "may" is only consistent with interpreting "may" as not being a word of compulsion. This Act was in the first instance to remain in force for a period of three years only from the 25th of March 1947, but its life was extended upto the 31st of March 1955 by the Imports and Exports (Control Amendment) Act, 1950, with the result that there is no substance in the contention that the Collector of Customs was bound to give to the owner the option u/s 183 of the Sea Customs Act. I may also add that this option is to be given to the owner, but it appears to me that by the word "owner" in this section

it is not meant the real owner of the goods but the owner who is Referred to in section 29 of the Sea Customs Act as the person who fills in the bill of entry or the shipping bill and makes the requisite declaration as to the truth of the statements in such bill. Even assuming therefore that it was necessary to give such an option, the petitioner can have no complaint in respect of non-compliance with such provisions. It is only Messrs. Hassanali Bros. who could complain of such non-compliance.

11. The result, therefore, is that the order of the Central Government and of the Board of Revenue and the Customs Collector in so far as it purports to levy a penalty on the petitioner shall be set aside as the penalty was levied without giving any notice to the petitioner.

12. As regards costs, the position is that the petitioner has substantially failed in his petition because the main point urged on his behalf was that the confiscation order was bad. In so far as the order imposed a penalty on the petitioner, it was not seriously sought to be supported on behalf of the respondents at the Bar. In my opinion, therefore, a fair order for costs would be that the petitioner should pay half the costs of the respondents.