(1985) 11 MP CK 0027

In the Madhya Pradesh High Court

Case No : M.P. No. 551 of 1981

Chuharmal APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 25-11-1985

Acts Referred:

Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 110, 111, 112, 123, 124

Citation : (1987) 14 ECC 228

Hon'ble Judges : J.S. Verma, Acting C.J.;B.M. Lal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

J.S. Verma, Ag. C.J.

1. By this petition under article 226 of the Constitution, the petitioner challenges the order dated 26-12-1975 (Document No. 6) passed by the Collector of Cental Excise, Nagpur, directing confiscation of 565 wrist watches seized from the petitioner''s possession on 12-5-1973 u/s 111 of the Customs Act, 1962 and imposition of penalty of Rs. 2,00,000 u/s 112 of the Act as well as the order dated 10-8-1979 (Document No. 8) passed by the Central Board of Excise and Customs dismissing the petitioner''s appeal and thereafter the order dated 8-1-1981 (Document No. 12) passed by the Government of India dismissing the petitioner''s revision.

2. The material fact? which are beyond controversy at this stage are these, on 12-5-1973 in a search made of the petitioner''s bed-room at Durg, a total of 565 wrist watches of foreign make valued at Rs. 87, 455 were seized from a suitcase, a secret cavity in a locked steel almirah, and behind the almirah concealed in a bundle of waste paper from the petitioner''s possession during his presence. A panchnama was prepared at the same time mentioning these facts. Th petitioner found himself unable to make any statement at that time on account of which recording of his statement was deferred. However, the petitioner went out of

station on 14-5-1973 and returned to Durg only on 29-5-1973. His statement was then recorded on 30-5-1973 as soon as he was available for this purpose. In his statement Annexure R-III duly signed by him, he admitted these facts and merely denied knowledge of the manner in which the watches came to be in the house. The petitioner was also given notice to show cause why the period of six months fixed by Section 110(2) of the Customs Act should not be extended but no reply was given by him till 10-11-1973 or even thereafter and, therefore, by an order dated 10-11-1973, before expiry of the period of six months, time was extended by the Collector of Customs for a further period of six months for giving a notice as required by Section 124(a) of the Act. Within the period so extended in accordance with proviso to Sub-section (2) of Section 110, a show cause notice specifying the requisite particulars was given to the petitioner on 4-5-1974. In reply, the petitioner made a general denial. The enquiry was fixed for giving a personal hearing to the petitioner on 31-10-1975 when the petitioner''s counsel appeared and sought an adjournment to 20-11-1975 which was granted. However, on 20-11-1975, the petitioner''s counsel stated that the petitioner did not want to avail the opportunity of personal hearing or to even cross-examine the witnesses in whose presence the panchnama at the time of the seizure of the watches was made.

3. In the above circumstances and on the basis of facts alleged in the show cause notice which the petitioner did not even care to refute by availing the opportunity given to him at the enquiry, the Collector of Central Excise passed the order dated 26-12-1975, as aforesaid. This order has been affirmed on appeal by the Board and thereafter in revision by the Government of India.

4. The first contention of learned counsel for the petitioner is that the notice dated 4-5-1974 issued u/s 124(a) of the Act which is the basis of the impugned orders being issued beyond the period of six months of the seizure of goods made on 12-5-1973, the entire proceedings are invalid for this reason. Learned counsel for the petitioner also contended that extension of the period of six months by another period of six months in accordance with proviso to Sub-section (2) of Section 110 could not be made ex parte without notice to the petitioner, as held in Assistant Collector of Customs Vs. Charan Das Malhotra, . There is no dispute that there was an order extending the period further by another six months made by the Collector in accordance with the proviso to Sub-section (2) of Section 110 and if there be no infirmity therein, as suggested by learned counsel for the petitioner, then this argument has no basis. We may state at the outset that no such point appears to have taken before any of the authorities and the same is urged for the first time at this stage. However, in paragraph 4 of the Collector''s order dated 26-12-1975 it has been specifically mentioned that a show cause notice was issued to the petitioner for extension of the period for issue of notice in accordance with Section 110(2) of the Customs Act, 1962, by another six months but no reply was given by the petitioner; and that the Collector, therefore, extended the period by another six months by his order date 10-11-1973. This specific averment in the Collector''s order coupled

with the petitioner''s failure to even raise this point at an earlier stage is sufficient to indicate that the order extending the period by another six months under the proviso to Sub-section (2) of Section 110 was made after giving an opportunity to the petitioner which he failed to avail. No such grievance can, therefore, be made by him now and the Supreme Court decision in Asstt. Collector of Customs v. Malhotra (supra) is of no assistance to him.

5. The next contention of learned counsel for the petitioner is that there is no evidence to determine the value of the watches so that the quantum of penalty could not be determined for want of such evidence. He also argues that no reasons have been given by the Collector for determining the quantum of penalty which indicates that determination of quantum is arbitrary. In our opinion, there is no merit even in these contentions. Value of the watches was mentioned as one of the particulars in the show cause notice given to the petitioner and he did not care to refute the same. As earlier stated, he did not avail of the opportunity at any stage to oppose either extension of time for giving the notice or to refute the allegations made in the show cause notice given thereafter. The consequence of the petitioner''s failure to discharge the burden of proof upon him by virtue of Section 123 of the Customs Act on the facts beyond controversy and also admitted by him in his statement recorded on 30-5-1973 constituted sufficient evidence for this purpose.

6. Similarly, there is no merit in the argument that no reasons have been given for quantification of the penalty. In the present case, the liability was incurred by the petitioner in 1973 and the Collector''s order was made in 1975. Admittedly, for about ten years even after the Collector''s order imposing the penalty, the amount of penalty has not been paid by the petitioner. Value of the smuggled goods was Rs. 87, 455 even at that time. The penalty permissible is up to five times the value of the goods. The benefit derived by the petitioner by non-payment of the amount of Rs. 2,00,000 at least for ten years is itself sufficient to indicate that the quantum of penalty cannot be treated as arbitrary at least now on these facts and in these circumstances.

7. Consequently, this petition fails and is dismissed. No costs. The amount of security deposit, if any, be refunded to the petitioner.

